

City Commission Meeting SUPPLEMENTAL MATERIAL

City Hall, Commission Chambers, 3rd Floor, 1700 Convention Center Drive July 12, 2006

Mayor David Dermer Vice-Mayor Jerry Libbin Commissioner Matti Herrera Bower Commissioner Simon Cruz Commissioner Luis R. Garcia, Jr. Commissioner Saul Gross Commissioner Richard L. Steinberg

City Manager Jorge Gonzalez City Attorney Jose Smith City Clerk Robert E. Parcher

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ATTENTION ALL LOBBYISTS

Chapter 2, Article VII, Division 3 of the City Code of Miami Beach entitled "Lobbyists" requires the registration of all lobbyists with the City Clerk prior to engaging in any lobbying activity with the City Commission, any City Board or Committee, or any personnel as defined in the subject Code sections. Copies of the City Code sections on lobbyists laws are available in the City Clerk's office. Questions regarding the provisions of the Ordinance should be directed to the Office of the City Attorney.

SUPPLEMENTAL MATERIAL

C7 - Resolutions

A Resolution Approving Amendment No. 1 To The Vacation Agreement Between The City Of Miami Beach And AR&J SOBE, LLC, Dated February 23, 2005; Said Amendment Providing For Uniformity Of Dates In The Vacation Agreement To Coincide With The Dates In The Development Agreement, With Respect To Developer's Deadline 1) Within Which To Execute A Supermarket Lease For The Fifth And Alton Project; And 2) For Commencement Of Construction Of The Project.

(Economic Development)
(Resolution & Agreement)

C7 - Resolutions (Continued)

A Resolution Accepting The Recommendation Of The City Manager Pertaining To The Ranking Of Firms Pursuant To Request For Proposals (RFP) No. 23-05/06 For Auditing Services To Examine The City's Basic Financial Statements Included In The City's Comprehensive Annual Financial Report (CAFR), Federal Grant Programs And State Projects (OMB A-133 Single Audit), The Miami Beach Redevelopment Agency's (RDA) Basic Financial Statements, The Parking Systems Funds' (PSF) Financial Statements, The Miami Beach Visitor And Convention Authority's (VCA) Financial Statements, The Miami Beach Convention Center (MBCC) And Jackie Gleason Theater Of The Performing Arts (JGT), As Managed By SMG, Financial Statements, And The Safe Neighborhood Parks And Bond Program (SNP); Authorizing The Administration To Enter Into Negotiations With The Firms McGladrey & Pullen, LLP., And KPMG LLP; And Further Authorizing The Mayor And City Clerk To Execute An Agreement(s) Upon The Completion Of Successful Negotiations By The Administration.

(Finance Department)
(Resolution)

C7R A Resolution Ratifying Expenditures To Superior Landscaping And Lawn Service, The City's Landscape Maintenance Contractor, For The Julia Tuttle Causeway, The Macarthur Causeway/Fifth Street Corridor, And Palm/Hibiscus, And Star Islands, In The Amount Of \$644,610.94, Comprised Of \$267,243.44 For Hurricane Clean-Up, And \$377,367.50 For Landscape Restoration And Beautification Services To The Julia Tuttle Causeway, Macarthur Causeway/Fifth Street Corridor, And Palm/Hibiscus And Star Islands, Following Hurricane Wilma.

(Parks & Recreation)
(Resolution)

C7S A Resolution Authorizing The Mayor And City Clerk To Execute An Agreement With Clarion Associates, For The Amount Of \$49,852, For Professional Planning Services For The Preparation Of An Impact Analysis And Development Mitigation System For Major Development Projects.

(Planning Department)

(Agreement)

C7U A Resolution Accepting The Recommendation Of The City Manager Pertaining To The Ranking Of Firms; Authorizing The Administration To Negotiate Agreements, Pursuant To Request For Proposals (RFP) No. 16-05/06, For Emergency Disaster Debris Monitoring Services For The City Of Miami Beach; And Further Authorizing The Mayor And City Clerk To Execute Agreements, Upon Completion Of Successful Negotiations, With Any Or All Of The Following Three (3) Firms: 1) Beck Disaster And Recovery, Inc.; 2)Malcolm Pirnie, Inc.; And 3) Camp Dresser And McKee, Inc. (Procurement)

(Resolution)

C7X A Resolution Adopting And Appropriating The First Amendment To The Police Confiscation Trust Fund Budget For Fiscal Year 2005/06, In The Amount Of \$72,335, To Be Funded From The Proceeds Of The State Confiscated Funds.

(Police Department) (Resolution)

C7 - Resolutions (Continued)

C7Y A Resolution Adopting The First Budget Amendment To The Police Special Revenue Account For Fiscal Year (FY) 2005/06, In The Amount Of \$9,580, Such Account Funded By Unclaimed Evidence Currently Held In The Police Special Revenue Account.

(Police Department)
(Resolution)

R5 - Ordinances

R₅D An Ordinance Amending Chapter 46 Of The City Code, Entitled "Environment," By Amending Article IV, Entitled "Noise," By Amending Section 46-156, Entitled "Temporary Permits," By Amending The Procedures And Requirements For Construction Activities And Providing Exceptions Thereto, Prohibiting Construction Noise On Sundays And National Holidays In All Non-Residential Zoning Districts, Except Under Certain Circumstances And As Authorized By The Building Official, Prohibiting Construction In Residential Zoning Districts Before 10:00 A.M. And After 4:00 P.M. On Sundays And National Holidays And Prohibiting Construction Noise Between 10:00 A.M. And 4:00 P.M. On Sundays And National Holidays, Providing Provisions For The Violation And Revocation Of Temporary Permits, And Providing Subheading Titles To Be Entitled (A) "Requirements And Procedures," (B) "Violation Of Temporary Permits" And (C) "Revocation Of Temporary Permits;" Amending Section 46-158, Entitled "Enforcement By Code Inspectors; Notice Of Violation, Warnings" By Amending Subsection (A) To Clarify The Notice Of Violation Provisions, Amending Subsection (B)(2) To Provide Clarification As To The Number Of Written Warnings In All Zoning Districts Except Single Family Zoning Districts; Providing For One Written Warning In Single Family Zoning Districts Prior To A Notice Of Violation And Providing That A Violation, Instead Of A Written Warning, Shall Be Issued If A Violator Is Also Being Cited For An Illegal Commercial Or Non-Permitted, Non-Residential Use In A Residential Zoning District; Amending Section 46-159 Entitled "Fines And Penalties For Violation; Appeals; Alternate Means Of Enforcement," By Providing Fines And Penalties For Any Offense Which Was Committed While The Violator Was Also Engaged In An Illegal Commercial Or Non-Permitted, Non-Residential Use In A Residential Zoning District; Providing For Codification, Repealer, Severability, And An Effective Date.

(City Manager's Office)
(Additional Information)

R7 - Resolutions

A Resolution Following A Duly Noticed Public Hearing To Hear Public Comment On Same, And Having Considered The City Administration's Recommendation And The Criteria For Granting Revocable Permits Pursuant To Section 82-94 Of The Miami Beach City Code, Denying An After-The-Fact Revocable Permit In Favor Of The Applicants, Mr. Michael R. Buckner And His Wife, Margo Buckner, As Owners Of The Property Located At 6120 La Gorce Drive, For Retaining An Iron Gate, Columns, Hedges, Paved Walkway, Paved Driveway, A Canvas Canopy And Portion Of A Wood Deck Within The Adjacent Apache Avenue City Right-Of-Way; Further Requiring Removal Of Encroachments And Restoration Of Portions Of The Public Street End Affected By Such Encroachments, In Such Manner As Shall Be Deemed Necessary By The City Administration. (Public Works)

(Resolution & Additional Information)

R7 - Resolutions (Continued)

R7M A Resolution Ratifying A Contract To National Concrete Preservation, Inc., In The Total Amount Of \$1,911,095, To Provide For The Removal Of The Exterior Stucco And Replacement With Fiber Reinforced Stucco; The Removal Of All Windows And Replacement With Hurricane Resistant Impact Resistant Windows And Frames; And The Repair Or Replacement Of All Damaged Exterior Decorative Moldings, Cornices, And Balusters At The Historic City Hall Building; Appropriating \$1,900,000 From The Capital Reserve Fund For Unforeseen Structural Repairs And Project Contingency; And Further Ratifying A Contract Change Order, In The Total Amount Of \$1,758,504, To The Aforestated National Concrete Preservation, Inc. Contract, To Provide For The Costs Of Additional Structural Repair.

(Public Works) (Resolution)

RESULUTION NO.	DLUTION NO.
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A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING AMENDMENT NO. 1 TO THE VACATION AGREEMENT BETWEEN THE CITY OF MIAMI BEACH AND AR&J SOBE, LLC, DATED FEBRUARY 23, 2005; SAID AMENDMENT PROVIDING FOR UNIFORMITY OF DATES IN THE VACATION AGREEMENT TO COINCIDE WITH THE DATES IN THE DEVELOPMENT AGREEMENT, WITH RESPECT TO DEVELOPER'S DEADLINE 1) WITHIN WHICH TO EXECUTE A SUPERMARKET LEASE FOR THE FIFTH AND ALTON PROJECT; AND 2) FOR COMMENCEMENT OF CONSTRUCTION OF THE PROJECT.

WHEREAS, on February 23, 2005, in consideration of the public benefits being provided by AR&J Sobe, LLC (Developer) with respect to Developer's development of the proposed Fifth and Alton Project (Project), the Mayor and City Commission adopted Resolution No. 2005-25827, approving and authorizing the vacation of the City's rights to an alley located adjacent to the proposed Project (the Alley); and

WHEREAS, the Vacation Agreement contains reverter and/or reconveyance provisions in the event Developer does not enter into a supermarket lease on or before eighteen (18) months after the effective date of the Vacation Agreement (which is February 23, 2005), or in the event Developer does not Commence Construction of the Project (as said term is defined in the Development Agreement referenced below) on or before September 1, 2006; and

WHEREAS, on May 16, 2005, the Mayor and City Commission adopted Resolution No. 2005-25899, approving the Development Agreement between the City and Developer, for the development of the Project; and

WHEREAS, the Development Agreement contains provisions that require execution of a supermarket lease on or before the "Outside Date" (which is November 18, 2006), and Construction Commencement of the Project prior to March 1, 2007; and

WHEREAS, due to the time that passed between the approval of the Alley vacation and Vacation Agreement and the approval of the Development Agreement, the deadlines for the execution of a grocery lease and the Commencement of Construction, as initially set forth in the Vacation Agreement, need to be amended to be consistent with the dates referencing same in the Development Agreement.

Agenda Item <u>C7E</u>

Date 7-12-06

NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that the Mayor and City Commission hereby approve and authorize the Mayor and City Clerk to execute Amendment No. 1 to the Vacation Agreement between the City of Miami Beach and AR&J Sobe, LLC, dated February 23, 2005; said Amendment providing for uniformity of dates in the Vacation Agreement to coincide with the dates in the Development Agreement, with respect to Developer's deadline 1) within which to execute a supermarket lease for the Fifth and Alton Project; and 2) for Commencement of Construction of the Project.

	PASSED and ADOPTED this	day of	_, 2006.
ATTEST:			
CITY CI EDI	·	MAYOR	
CITY CLER	\	WATUR	

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APPROVED AS TO FORM & LANGUAGE & FOR EXECUTION

Attorney Date

AMENDMENT NO. 1 TO THE VACATION AGREEMENT BETWEEN THE CITY OF MIAMI BEACH, FLORIDA AND AR&J SOBE, LLC DATED FEBRUARY 23, 2005

This Amendment No. 1 to the Agreement made and entered this _____day of July, 2006, by and between the CITY OF MIAMI BEACH, a Municipal Corporation existing under the laws of the State of Florida, having its principal offices at 1700 Convention Center Drive, Miami Beach, Florida 33139 (hereinafter referred to as CITY), and AR&J SOBE, LLC., a Florida limited liability corporation having offices at 2665 South Bayshore Drive, Suite 1200, Coconut Grove, FL 33133 (hereinafter referred to as DEVELOPER).

RECITALS

- A. AR&J Sobe, LLC (Developer) anticipates constructing a project on the land bordered by 5th Street, 6th Street, Alton Road and Lenox Avenue, (which includes the Alley, as defined below) containing a grocery store and other retail, commercial, office and/or restaurant uses and parking garage (the Project).
- B. On February 23, 2005, in consideration of the public benefits provided by Developer, the Mayor and City Commission adopted Resolution No. 2005-25827, approving and authorizing the vacation of the City's rights to an alley located adjacent to the proposed Project (the Alley).
- C. Developer and City agreed to the terms and conditions for vacating the Alley; Resolution No. 2005-25827 also approved and authorized the parties to execute a Vacation Agreement.
- D. Additionally, on May 18, 2005, in consideration of the public benefits provided by Developer, the Mayor and City Commission adopted Resolution No. 2005-25899, approving and authorizing a Development Agreement for the Project by and between the City and Developer.

NOW, THEREFORE, the parties hereto, and in consideration of the mutual promises, covenants, agreements, terms, and conditions herein contained, and other good and valuable consideration, the respect and adequacy are hereby acknowledged, do agree as follows:

1. ABOVE RECITALS

The above recitals are true and correct and are incorporated as a part of this Amendment No. 1.

2. **MODIFICATIONS**

Paragraphs 4(a) and 4(b) of the Vacation Agreement between the City and Developer, dated February 23, 2005, are amended, respectively, as follows:

- A. Paragraph 4(a) of the Vacation Agreement is amended as follows:
 - (a) In the event that Developer shall not have entered into a Grocery Lease, as that term is defined in Paragraph 2 of this Agreement, (i) on before the Outside Date (which shall be defined as the date which is eighteen (18) months after the Eeffective Ddate of the this Development Agreement (the Effective Date of the Development Agreement between the parties is May 18, 2005) or the date of Commencement of Construction as that term is defined in the Development Agreement (the Construction Commencement Date), whichever is earlier), which unconditionally (except for typical contingencies for Substantial Completion and performance by Developer of its construction obligations under the Grocery Lease) obligates Developer to lease not less than 40,000 square feet (although approximately 44,000 square feet is contemplated) to a national or regional grocery store for use as a grocery supermarket and which obligates the tenant (under the Grocery Lease) to initially open for business as a grocery supermarket in the entire Grocery Lease Premises upon substantial completion of construction; or
- B. Paragraph 4(b) of the Vacation Agreement is amended as follows:
 - (b) In the event Developer shall not have Commenced Construction of the Project on or before September 1st, 2006, the Outside Date, as that term is defined in the Development Agreement and re-stated in subsection 4(a) above, subject to extension for Unavoidable Delays, or the first construction draw funding of Developer's Project construction loan has not occurred within six (6) months after Commencement of Construction, subject to extension for Unavoidable Delays (but, in respect to the condition for funding of the first Project construction draw, the reverter of the Alley shall abate as long as construction is proceeding and shall be deemed waived upon funding of the first Project construction draw, whenever it occurs); or

3. **OTHER PROVISIONS.**

All other provisions of the Agreement, as amended, are unchanged.

4. **DEFINED TERMS.**

Capitalized terms shall have the same meaning as set forth in the Agreement unless otherwise defined herein.

5. **RATIFICATION.**

The CITY and DEVELOPER ratify the terms of the Vacation Agreement, as amended by this Amendment No. 1.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment No. 1 to be executed in their names by their duly authorized officials as of the date first set forth above.

ATTEST:	CITY OF MIAMI BEACH	
City Clerk	By Mayor	
ATTEST:	DEVELOPER:	
	AR&J SOBE PARTNERS, LLC a Florida limited liability company, b Berkowitz Limited Partnership, its manager by Berkowitz, LLC, its general partner	
Signature	By Jeffrey L. Berkowitz, Manager	
Print Name/Title		

APPROVED AS TO FORM & LANGUAGE & FOR EXECUTION

City Attorney \\ \ \ Date

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RESOI	LUTION	NO.	
KE201		NO.	

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, ACCEPTING THE RECOMMENDATION OF THE CITY MANAGER PERTAINING TO THE RANKING OF FIRMS PURSUANT TO REQUEST FOR PROPOSALS (RFP) NO. 23-05/06 FOR AUDITING SERVICES TO EXAMINE THE CITY'S BASIC FINANCIAL STATEMENTS INCLUDED IN THE CITY'S COMPREHENSIVE ANNUAL FINANCIAL REPORT (CAFR), FEDERAL GRANT PROGRAMS AND STATE PROJECTS (OMB A-133 SINGLE AUDIT), THE MIAMI BEACH REDEVELOPMENT AGENCY'S (RDA) BASIC FINANCIAL STATEMENTS, THE PARKING SYSTEMS FUNDS' (PSF) FINANCIAL STATEMENTS. THE MIAMI BEACH VISITOR AND CONVENTION AUTHORITY'S (VCA) FINANCIAL STATEMENTS, THE MIAMI BEACH CONVENTION CENTER (MBCC) AND JACKIE GLEASON THEATER OF THE PERFORMING ARTS (JGT), AS MANAGED BY SMG, FINANCIAL STATEMENTS, AND THE SAFE NEIGHBORHOOD PARKS AND BOND PROGRAM (SNP); AUTHORIZING THE ADMINISTRATION TO ENTER INTO NEGOTIATIONS WITH THE FIRMS MCGLADREY & PULLEN, LLP., AND KPMG LLP; AND FURTHER AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AN AGREEMENT(S) UPON THE COMPLETION OF SUCCESSFUL NEGOTIATIONS BY THE ADMINISTRATION.

WHEREAS, on May 10, 2006, the City Commission authorized the issuance of an RFP to solicit proposals for auditing services for the City of Miami Beach; and

WHEREAS, on May 19, 2006, RFP No. 23-05/06 was issued and notices sent to over 22 firms; and

WHEREAS, on the specified due date of June 19, 2006, the Procurement Division received responses from McGladrey & Pullen, LLP, and KPMG LLP; and

WHEREAS, on June 20, 2006, the City Manager, via Letter to Commission No. 165-2006, appointed an Evaluation Committee (the "Committee"), consisting of the following individuals:

Jeryl (Deede) Weithorn - Independent CPA; Georgina Echert - Assistant Director, Finance, CMB; James Sutter - Internal Auditor, CMB; Larry Herrup - Independent CPA; Marc Gidney - Independent CPA; and

WHEREAS, the Committee convened on June 27, 2006 and was provided with an overview of the project, information relative to the City's Cone of Silence Ordinance, and the Government in the Sunshine Law; and

WHEREAS, the Committee scored the two (2) firms based on the following criteria, as outlined in the RFP, for a maximum possible total of 100 points:

Agenda Item <u>C7F</u>

Date <u>7-/2-06</u>

- Firm's Experience in Auditing Services 20 points;
- Qualifications of the Project Team 20 points;
- Methodology and Approach 10 points;
- Risk Assessment Plan for Ensuring Quality of Work 15 points;
- Past Performance Based on Client References and Number and Quality of the Performance Evaluation Surveys – 15 points;
- Fees 20 points; and

WHEREAS, the Committee unanimously ranked McGladrey & Pullen as the top-ranked firm; and

WHEREAS, notwithstanding the aforestated ranking, the Committee also voted to allow the Administration the flexibility to engage both submitting firms in negotiations, with the potential to split the different audits between the two firms, as deemed in the best interest of the City; and

WHEREAS, the City Manager concurs with the Committee's recommendations.

NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that the Mayor and City Commission hereby accept the recommendation of the City Manager pertaining to the ranking of firms pursuant to Request for Proposals (RFP) No. 23-05/06 for Auditing Services; authorize the Administration to enter into negotiations with the firms of McGladrey & Pullen, LLP, and KPMG LLP; and further authorize the Mayor and City Clerk to execute an agreement(s) upon the completion of successful negotiations by the Administration.

PASSED AND ADOPTED this _	day of	, 2006.	
ATTEST:			
CITY CLERK	MAYO	DR	-

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APPROVED AS TO FORM & LANGUAGE

& FOR EXECUTION

RESOL	UTION N	0.	

A RESOLUTION OF THE MAYOR AND THE CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, RATIFYING EXPENDITURES TO SUPERIOR LANDSCAPING AND LAWN CITY'S LANDSCAPE **MAINTENANCE** SERVICE. THE CONTRACTOR, FOR THE JULIA TUTTLE CAUSEWAY, THE MACARTHUR CAUSEWAY/FIFTH STREET CORRIDOR, AND PALM/HIBISCUS, AND STAR ISLANDS, IN THE AMOUNT OF \$644.610.94. COMPRISED \$267,243.44 HURRICANE CLEAN-UP, AND \$377,367.50 FOR LANDSCAPE RESTORATION AND BEAUTIFICATION SERVICES TO THE JULIA TUTTLE CAUSEWAY, MACARTHUR CAUSEWAY/FIFTH STREET CORRIDOR, AND PALM/HIBISCUS AND STAR ISLANDS, FOLLOWING HURRICANE WILMA.

WHEREAS, on September 8, 2004, the Mayor and City Commission approved a Landscape Maintenance Agreement between the City and Superior Landscape and Lawn Service, Inc., which Agreement requires that the contractor must be available to respond in the event of severe weather, such as a hurricane; and

WHEREAS, immediately after the "all clear" was given for Hurricane Wilma, the Administration directed Superior Landscape and Lawn Service to perform debris clean-up at its contracted sites; and

WHEREAS, the contractor responded promptly and began clean-up work on the Julia Tuttle Causeway, MacArthur Causeway/Fifth Street Corridor, and certain public property portions of Palm/Hibiscus and Star Islands; and

WHEREAS, the cost for the clean-up services provided by Superior Landscape and Lawn Service was \$ 267,243.44; and

WHEREAS, the Agreement also provides for the performance of additional services such as site landscape/irrigation restoration work, as needed; and

WHEREAS, the first phase of the Julia Tuttle Gauseway restoration to be completed this Fiscal Year totals \$ 208, 633; the MacArthur Causeway/ Fifth Street Corridor will receive \$140,149.50 in restoration work; and Palm/Hibiscus and Star Islands will receive \$28,585; and

WHEREAS, funding, in the amount of \$267,243.44, is available from appropriated funds in the Hurricane Wilma Account to pay for the emergency clean-up services, and \$377,367.50 is available from the Capital Investment Upkeep Account (CIUA) for the landscape restoration/beautification of the Julia Tuttle Causeway, MacArthur Causeway/Fifth Street Corridor, and Palm/Hibiscus and Star Islands.

Agenda Item <u>C7R</u>

Date 7-12-06

NOW, THEREFORE, BE IT DULY RESOLVED THAT THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA that the Mayor and City Commission hereby ratify expenditures to Superior Landscaping and Lawn Service, Inc., the City's landscape maintenance contactor, for the Julia Tuttle Causeway, the MacArthur Causeway/Fifth Street Corridor, and Palm/Hibiscus, and Star Islands, in the amount of \$644,610.94, comprised of \$267,243.44 for hurricane clean-up, and \$377,367.50 for landscape restoration and beautification services to the Julia Tuttle Causeway, MacArthur Causeway/Fifth Street Corridor, and Palm/Hibiscus and Star Islands, following Hurricane Wilma.

PASSED and ADOPTED this	day of	2006.	
	MAY	OR	
ATTEST:			
CITY CLERK		APPROVED FORM & LAN & FOR EXEC	IGUAGE
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		City Attorney	Ø Date
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AGREEMENT BETWEEN

CITY OF MIAMI BEACH

AND

CLARION ASSOCIATES OF COLORADO, LLC

FOR PROFESSIONAL PLANNING SERVICES

FOR THE

PREPARATION OF AN IMPACT ANALYSIS AND DEVELOPMENT MITIGATION FOR MAJOR DEVELOPMENT PROJECTS (PART ONE: POLICY FRAMEWORK)

JUNE 20, 2006

Agenda Item <u>C7S</u>

Date <u>7-12-06</u>

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SCHEDULE A SCOPE OF SERVICES

SCHEDULE D PROJECT SCHEDULE

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SCHEDULE B CONSULTANT COMPENSATION

TERMS AND CONDITIONS OF AGREEMENT

BETWEEN THE CITY OF MIAMI BEACH AND CONSULTANT

CLARION ASSOCIATES OF COLORADO, LLC

FOR PROFESSIONAL PLANNING SERVICES

FOR THE

PREPARATION OF AN IMPACT ANALYSIS AND DEVELOPMENT MITIGATION SYSTEM FOR MAJOR DEVELOPMENT PROJECTS (PART ONE: POLICY FRAMEWORK)

This Agreement made and entered into this ___ day of _____, 2006, by and between the CITY OF MIAMI BEACH, a municipal corporation existing under the laws of the State of Florida (hereinafter referred to as City), having its principal offices at 1700 Convention Center Drive, Miami Beach, Florida, 33139, and CLARION ASSOCIATES OF COLORADO, LLC., a Colorado limited liability partnership having its principal office at 1526 E. Franklin Street, Suite 102, Chapel Hill, North Carolina 27514 (hereinafter referred to as Consultant).

WITNESSETH:

WHEREAS, the City intends to undertake a project within the City of Miami Beach, which is more particularly described in this Agreement and the attached Schedule "A", and wishes to engage the Consultant to provide planning services for the Project at the agreed fees as set forth in this Agreement; and

WHEREAS, the Consultant desires to contract with the City for performance of planning services relative to the Project, as hereinafter set forth.

NOW THEREFORE, City and Consultant, in consideration of the mutual covenants and agreements herein contained, agree as follows:

ARTICLE 1. DEFINITIONS

- 1.1 **CITY:** The "City" shall mean the City of Miami Beach, a Florida municipal corporation having its principal offices at 1700 Convention Center Drive, Miami Beach, Florida, 33139.
- 1.2 **CITY COMMISSION:** "City Commission" shall mean the governing and legislative body of the City.
- 1.3 CITY MANAGER: The "City Manager" shall mean the chief administrative officer of the City. The City Manager shall be construed to include any duly authorized designees, including the Project Coordinator, and shall serve as the City's representative to whom administrative requests for approvals shall be made and who shall issue authorizations (exclusive of those authorizations reserved to the City Commission) to the Consultant.
- 1.4 **PROPOSAL DOCUMENTS:** "Proposal Documents" shall mean REQUEST FOR QUALIFICATIONS NO. 05-05/06 FOR IMPACT ANALYSIS AND DEVELOPMENT MITIGATION SYSTEM, issued by the City in contemplation of this Agreement, together with all amendments thereto, if any, and the Consultant's proposal in response thereto (Proposal), which is incorporated by reference in this Agreement and made a part hereof; provided, however, that in the event of an express conflict between the Proposal Documents and this Agreement, this Agreement shall prevail.
- 1.5 **CONSULTANT:** The "Consultant" is herein defined as Clarion Associates of Colorado LLC, a Colorado limited liability partnership having its principal office at 1526 E. Franklin Street, Suite 102, Chapel Hill, North Carolina, 27514. When the term "Consultant" is used in this Agreement it shall be deemed to include any sub-consultants and any other person or entity acting under the direction or control of Consultant. Any subconsultants retained by Consultant pursuant to this Agreement and the Project shall be subject to prior written approval of the City. The following subconsultants were included

in the Consultant's Proposal and are hereby approved by the City for the Project:

Fiscal and Impact Analysis Consultant: TischlerBise

Transportation and Planning Consultant: Glatting Jackson Kercher Anglin Lopez
Rinehart

1.6 **CITY PROJECT COORDINATOR:** The "Project Coordinator" shall mean the individual appointed by the City Manager who shall be the City's authorized representative to coordinate, direct, and review on behalf of the City, all matters related to the Project, except as otherwise provided herein.

1.7 **BASIC SERVICES:** "Basic Services" shall include the planning and related professional services relative to the Project, as hereinafter set forth, including: planning, impact analyses, fiscal analyses, transportation, regulation, and growth management, as described in Article 2 herein and in Schedule "A" entitled "Scope of Services" attached hereto.

1.8 **PROJECT:** The "Project" shall mean the preparation of a strategy and implementation program for impact analyses and a development mitigation system for Major Development Projects in the City, as described in Schedule "A" attached hereto.

For purposes of this Agreement, the Project shall only include those services as referenced in this Agreement, and the attached "Schedule A", pertaining to "Part One: The Policy Framework." City and Consultant hereby acknowledge and agree that the City shall neither be bound nor obligated to proceed and/or contract with Consultant for the provision of future services, including, without limitation, any services relating to "Part Two: Implementation", unless expressly agreed to by the City, in its sole and absolute discretion, and (if agreed to) unless memorialized and approved by the City and Consultant, in a written amendment to this Agreement (or, in the alternative, a separate agreement, as determined by the parties).

1.8.1 **PROJECT COST:** The "Project Cost", as established by the City, shall mean the total cost of the Project to the City including: professional compensation and expenses.

- 1.8.2 **PROJECT SCOPE:** The "Project Scope" shall mean the description of the Project contained in Schedule "A" attached hereto.
- 1.9 **FORCE MAJEURE:** "Force Majeure" shall mean any delay occasioned by superior or irresistible force occasioned by violence in nature without the interference of human agency such as hurricanes, tornadoes, floods, loss caused by fire and other similar unavoidable casualties; or by changes in Federal, State or local laws, ordinances, codes or regulations, enacted after the date of this Agreement and having a substantial impact on the Project; other causes beyond the parties' control; or by any other such causes which the Consultant and the City decide in writing justify the delay; provided, however, that market conditions, labor conditions, and similar matters which normally impact on the bidding process shall not be considered a Force Majeure.
- 1.10 **CONTRACT DOCUMENTS:** "Contract Documents" shall mean this Agreement; or a modification of the following: (1) written amendment to this Agreement signed by both parties; or (2) an approved Change Order.
- 1.11 **CONTRACT AMENDMENT:** "Contract Amendment" shall mean the written order to the Consultant approved by the City, as specified in this Agreement, and signed by the City's duly authorized representative, authorizing a change in the Project or the method and manner of performance thereof, or an adjustment in the fees and/or completion dates, as applicable. Contract Amendments shall be approved by the City Commission, if they exceed twenty-five thousand dollars (\$25,000.00) or the City Manager if they are twenty-five thousand dollars (\$25,000.00) or less in amount (or other such amount as may be specified by the City of Miami Beach Procurement Ordinance, as amended). Even for Contract Amendments for less than twenty-five thousand (\$25,000.00), the City Manager shall retain the right to seek and obtain concurrence of the City Commission for the approval of any such Contract Amendment.
- 1.12 **ADDITIONAL SERVICES:** "Additional Services" shall mean those services described in Article 4 herein, which have been duly authorized in writing by the City

Manager prior to commencement of same.

1.13 **SERVICES:** "Services" shall mean the services to be performed on the Project by the Consultant pursuant to this Agreement, whether completed or partially completed, and includes other labor and materials, services provided, or to be provided, by Consultant to fulfill its obligations herein.

1.14 **SCHEDULE:** "Schedule" shall mean the schedules attached to this Agreement and referred to as follows:

<u>Schedule A</u> – Scope of Services.

<u>Schedule B</u>— Consultant Compensation: The schedule of compensation to the Consultant for Basic Services, and for Reimbursable Expenses, as defined, plus any Additional Services, as submitted by the Consultant and approved by the City.

<u>Schedule C</u> – Hourly Billing Rate Schedule: The schedule of Hourly Compensation Rates to the Consultant as submitted by the Consultant and approved by the City.

Schedule D - Project Schedule.

1.15 **SCOPE OF SERVICES:** "Scope of Services" shall mean the Project Scope as described in Schedule "A", together with the Basic Services and any Additional Services approved by the City, as described in Articles 2 and 4, respectively herein.

ARTICLE 2. BASIC SERVICES

The Consultant shall provide Basic Services for the Project as set forth hereafter. The Services for this Project will be performed by the Consultant upon receipt of a written Notice to Proceed issued by the City Manager, or his designee, and Consultant shall countersign the Notice to Proceed. A separate Notice to Proceed shall be required for commencement of each Task, as discussed in attached Schedule "A" entitled "Scope

of Services".

The Consultant's Basic Services shall consist of the Three (3) Tasks as described in attached Schedule A "Scope of Services".

The Consultant shall coordinate with subconsultants, and conform to all applicable codes and regulations. Consultant, as it relates to its Services, represents and warrants to the City that it is knowledgeable of codes, rules and regulations applicable in the jurisdictions in which the Project is located, including, local ordinances and codes (City of Miami Beach), Florida Statutes, administrative rules and regulations including, Federal laws, rules and regulations. The Consultant agrees to comply with all such laws, codes, rules, and regulations now in effect, and as may be amended or adopted at any time, and shall further take into account all known pending changes to the foregoing, of which it should reasonably be aware.

The Consultant expressly agrees that all of its duties, services and responsibilities under this Agreement shall be performed in accordance with the standard of care normally exercised in the planning profession for comparable Projects of this nature in South Florida. In addition, Consultant represents that it is experienced and fully qualified to perform the Services contemplated by this Agreement, and that it is properly licensed pursuant to the applicable laws, rules and regulations to perform such Services.

2.1 PLANNING SERVICES:

Consultant shall perform Planning Services as noted in attached Schedule "A" entitled "Scope of Services".

2.2 ADDITIONAL SERVICES:

If required and so approved by the City, Consultant shall provide Additional Services as noted in attached Schedule "A" entitled "Scope of Services".

2.3 **RESPONSIBILITY FOR CLAIMS AND LIABILITIES**: Approval by the City shall not constitute nor be deemed a release of the responsibility and liability of the

Consultant, its employees, subconsultants, and agents for the accuracy and competency of its professional work for the Project;

- 2.4 **TIME:** It is understood that time is of the essence in the completion of this Project, and in this respect the parties agree as follows:
 - 2.4.1 The Consultant shall perform the Services as expeditiously as is consistent with the standard of professional skill and care required by this Agreement and the orderly progress of the Work.
 - 2.4.2 The parties agree that the Consultant's Services during all tasks of this Project will be performed in a manner that shall conform with the approved Project Schedule, which is attached to this Agreement as Schedule "D". The Consultant may submit requests for an adjustment to the Project Schedule, made necessary by undue time taken by the City to approve the Consultant's work products, and/or excessive time taken by the City to approve the Services or parts of the Services. The City shall not unreasonably refuse to approve such adjustment(s) to the Project Schedule if the request is made in a timely manner and is justified.
 - 2.4.3 In providing the Services described in this Agreement, the Consultant shall use its best efforts to maintain, on behalf of the City, a constructive, professional, cooperative working relationship with the City Project Coordinator and City staff.
 - 2.4.4 It is further the intent of this Agreement that the Consultant shall perform its duties under this Agreement in a competent, timely and professional manner and that it shall be responsible to the City for any failure in its performance except to the extent that acts or omissions by the City or others make such performance impossible.
 - 2.4.5 Consultant agrees that, when the Services to be provided hereunder

relate to a professional service which, under Florida Statutes, requires a license, certification of authorization, or other form of legal entitlement to practice such services, it shall employ and/or retain only qualified personnel to provide such services.

- 2.4.6 Consultant's project manager (herein after referred to as "Project Manager") is Craig Richardson. City agrees he is professionally qualified to undertake the role of project manager for this Project. The Project Manager is authorized and responsible to act on behalf of Consultant with respect to directing, coordinating and administrating all aspects of Services to be provided and performed under this Agreement.
- 2.4.7 Consultant agrees, within fourteen (14) calendar days of receipt of written notice to do such from City, to promptly remove and replace Project Manager, or any other personnel employed or retained by Consultant, or any subconsultant engaged by Consultant, which request may be made by City with or without stating its cause.
- 2.4.8 Consultant herein represents to City that it has expertise in the type of professional services that will be performed pursuant to this Agreement. Consultant agrees that all Services to be provided by Consultant pursuant to this Agreement shall be subject to City's review and approval and shall be in accordance with the generally accepted standards of professional practice in the State of Florida.
- 2.4.9 Consultant agrees not to divulge, furnish or make available to any third person, firm or organization, without City's prior written consent, or unless incident to the proper performance of Consultant's obligations hereunder, or in the course of judicial or legislative proceedings where such information has been properly subpoenaed, any non-public information concerning Services to be rendered by Consultant hereunder, and Consultant shall require its employees, agents, and subconsultants to comply with the provisions of this paragraph.

- The City and Consultant acknowledge that the Scope of Services does 2.4.10 not delineate every detail and minor work task required to be performed by Consultant to complete the Project. If, during the course of the performance of the Services contemplated in this Agreement, Consultant determines that work should be performed to complete the Project which is, in the Consultant's opinion, outside the level of effort originally anticipated, whether or not the Scope of Services identifies the work items, Consultant shall notify the Project Coordinator, in writing, in a timely manner, and obtain said Project Coordinator's written consent, before proceeding with the work. The Project Coordinator must comply with Contract Amendment processing requirements as outlined in Article 1.11, prior to issuance of any written authorization to proceed with Additional Services to Consultant. If Consultant proceeds with additional Services without notifying and obtaining the consent of the Project Coordinator, said work shall be deemed to be within the original level of effort, and deemed included as a Basic Service herein, whether or not specifically addressed in the Scope of Services. Notice to the Project Coordinator does not constitute authorization or approval by the City to perform the work. Performance of work by Consultant outside the originally anticipated level of effort without the prior written consent of the City shall be at Consultant's sole risk.
- 2.4.11 Consultant shall establish and maintain files of documents, letters, reports, plans, etc. pertinent to the Project. Consultant shall provide City with a copy of applicable Project correspondence for City to file in its filing system. In addition, Consultant shall provide electronic Project document files to the City, at the completion of the Project.
- 2.4.12 It is further the intent of this Agreement that the Consultant shall perform its duties under this Agreement in a competent, timely and professional manner.
- 2.7.13 In the event Consultant is unable to timely complete the Project because of delays resulting from untimely review by City or other governmental

authorities having jurisdiction over the Project, or such delays are caused by factors outside the control of Consultant, Consultant shall provide City with immediate written notice stating the reason for such delay and a revised anticipated schedule of completion. City, upon review of Consultant's submittal and such other documentation as the City may require, may grant a reasonable extension of time for completion of the Project and may provide reasonable compensation, if appropriate.

2.7.14 The Consultant covenants with the City to furnish its Services hereunder properly, in accordance with the standards of its profession and in conformance with applicable codes and other applicable Federal, State and local rules, regulations and laws, of which it should reasonably be aware, throughout the term of this Agreement. The City's participation in the Project in no way relieves the Consultant of its professional duties and responsibilities under applicable law and this Agreement

ARTICLE 3. THE CITY'S RESPONSIBILITIES

- 3.1 The City shall designate in writing a City Project Coordinator to act as the City's representative with respect to the services to be rendered under this Agreement (herein after referred to as Project Coordinator or City Projector Coordinator). The Project Coordinator shall have authority to transmit instructions, receive information, interpret and define City policies and decisions with respect to Consultant's Services on this Project. However, the Project Coordinator is not authorized to issue any verbal or written orders or instructions to Consultant that would have the effect, or be interpreted to have the effect, of modifying or changing in any way whatsoever, unless approved by the City Manager and/or City Commission in compliance with Article 1.11, requirements, including but not limited to the following:
 - a) The Scope of Services to be provided and performed by Consultant hereunder;
 - b) The time the Consultant is obligated to commence and complete all such Services; or

- c) The amount of compensation the City is obligated or committed to pay Consultant.
- 3.2 The City shall assist Consultant by placing at Consultant's disposal all information that the City has available pertinent to the Project, including previous reports and any other data relative to Consultant's completion of its responsibilities under the Agreement. Any conclusions or assumptions drawn through examination thereof shall be the sole responsibility of the Consultant. Additional Services required due to inaccurate, incomplete or incorrect information supplied by the City may be undertaken by the Consultant as an Additional Service to this Agreement. Consultant shall notify the Project Coordinator, in writing, in a timely manner and obtain said Project Coordinator's written consent, before proceeding with the work. If Consultant proceeds with the Additional Services without notifying and obtaining the consent of the Project Coordinator, said work shall be deemed to be within the original level of effort and deemed included as a Basic Service herein.
- 3.3 In the City's sole discretion, the City may furnish legal, accounting and insurance counseling services as may be required at any time for the Project, including such auditing services as the City may require to verify the Consultant's applications for payment or to ascertain that Consultant has properly remitted payment due to sub consultants working on this Project for which Consultant has received payment from the City.
- 3.4 If the City observes or otherwise becomes aware of any nonconformance in the Project, the City shall give prompt written notice thereof to the Consultant.
- 3.5 The City shall furnish required information and services and render approvals and decisions in writing as reasonably expeditious as necessary for the orderly progress of the Consultant's Services and of the Work. No approvals required by the City during the various phases of the Project shall be unreasonably delayed or withheld; provided that the City shall at all times have the right to approve or reject any proposed submissions of Consultant for any reasonable basis.

- 3.6 The City Commission shall be the final authority to do or to approve the following actions or conduct by passage of an enabling resolution or amendment to this Agreement.
 - 3.6.1 The City Commission shall be the body to consider, comment upon, or approve any amendments or modifications to this Agreement, except when noted otherwise (i.e., where delegated to the City Manager or his designee) in this Agreement.
 - 3.6.2 The City Commission shall be the body to consider, comment upon, or approve any assignment, sale, transfer or subletting of this Agreement or any interest therein and any subcontracts made pursuant to this Agreement. Assignment and transfer shall be defined to include sale of the majority of the stock of a corporate Consultant.
 - 3.6.3 All required City Commission approvals and authorizations shall be expressed by passage of an appropriate enabling resolution and, if an amendment, by the execution of an appropriate amendment to this Agreement.
 - 3.6.4 The City Commission shall hear appeals from the administrative decision of the City Manager's appointed designee(s), upon the Consultant's written request, in which case the Commission's decision shall be final.
 - 3.6.5 The City Commission shall approve or consider all Contract Amendments that exceed the sum of twenty five thousand dollars (\$25,000.00) (or other such amount as may be specified by the City of Miami Beach Procurement Ordinance, as amended).
- 3.7 The City Manager or his designee(s) shall serve as the City's representative to whom administrative requests for approvals shall be made and who shall issue authorizations (exclusive of those authorizations reserved to the City Commission) to the Consultant.

- 3.7.1 The City Manager shall decide, in his professional discretion, matters arising pursuant to this Agreement which are not otherwise expressly provided for in this Agreement, and shall attempt to render administrative decisions promptly to avoid unreasonable delay in the progress of the Consultant's Services. The City Manager, in his administrative discretion, may consult with the City Commission concerning disputes or matters arising under this Agreement regardless of whether such matters or disputes are enumerated herein.
- 3.7.2 The City Manager shall be authorized, but not required, at the request of the Consultant, to reallocate monies already budgeted toward payment of the Consultant, provided, however, that the Consultant's compensation or other budgets established by this Agreement cannot be increased.
- 3.7.3 The City Manager, or his designee, shall be the sole representative of the City authorized to issue a Notice to Proceed, as referenced in Article 2 and the attached Schedule "A" entitled "Scope of Services".
- 3.7.4 The City Manager may approve Contract Amendments which do not exceed the sum of twenty five thousand dollars (\$25,000.00) (or other such amount as may be specified by the City of Miami Beach Purchasing Ordinance, as amended).
- 3.7.5 The City Manager may, in his sole discretion, form a committee or committees, or inquire of or consult with persons for the purpose of receiving advice and recommendations relating to the exercise of his powers, duties and responsibilities under this Agreement.

ARTICLE 4. ADDITIONAL SERVICES

4.1 Additional Services for this Project will only be performed by the Consultant following receipt of a written authorization by the City Project Coordinator prior to commencement of same. Such authorization shall contain a description of the Additional

Services required; an hourly fee, as provided in Schedule "C" with an "Not to Exceed" amount on additional Reimbursable Expenses (if any); and an amended completion date for the Project (if any). "Not to Exceed" shall mean the maximum cumulative hourly fees allowable, which the Consultant shall not exceed without specific written authorization from the City. The "Not to Exceed" amount is not a guaranteed maximum cost for the services requested by the City and all costs applied to such shall be verifiable through time sheet and reimbursable expense reviews.

- 4.2 The term "Additional Services" includes services involving the Consultant or any subconsultants whether previously retained for the Services or not, or whether participating as members with Consultant or not.
- 4.3 Additional Services may consist of the following:
 - 4.3.1 Providing such other professional services to the City relative to the Project which arises from subsequent circumstances and causes (excluding circumstances and causes resulting from error, inadvertence or omission of the Consultant) which do not currently exist or which are not contemplated by the parties at the time of execution of this Agreement.

ARTICLE 5. REIMBURSABLE EXPENSES

- 5.1 Reimbursable Expenses are in addition to the compensation for Basic and Additional Services and include actual expenditures made by the Consultant in the interest of the Project. All Reimbursable Expenses pursuant to this Article, in excess of \$500, must be authorized in advance in writing by the Project Coordinator. Invoices or vouchers for Reimbursable Expenses shall be submitted by the Consultant to the City, along with supporting receipts, and other back-up material reasonably requested by the City, and Consultant shall certify as to each such invoice that the amounts and items claimed as reimbursable are "true and correct and in accordance with the Agreement".
- 5..2 Expenses subject to reimbursement in accordance with the above procedures may

include the following:

- 5.2.1 Expense of reproduction, postage and handling of drawings, specifications and other documents, excluding reproductions for the office use of the Consultant and sub-consultants. Courier and postage between the Consultant and its sub-consultants are not reimbursable.
- 5.2.2 Expenses for reproduction and the preparation of graphics for community workshops

ARTICLE 6. COMPENSATION FOR SERVICES

6.1 The Consultant shall be compensated the not to exceed fee listed in Schedule "B" for Basic Services, based on the "Hourly Rate Schedule" presented in Schedule "C". Payments for Basic Services shall be made within forty-five (45) calendar days of receipt and approval of an acceptable invoice by the City's Project Coordinator. Payments shall be made in proportion to the Services satisfactorily performed in each Task so that the payments for Basic Services for each Task shall not exceed the progress percentage noted in the Consultant's Progress Schedule, submitted with each invoice. No markup shall be allowed on subcontracted Basic Services.

The City and the Consultant agree that the Consultant's fee will be \$49,852.00, as detailed in Schedule "B" for the provision of the services described in the attached Schedule "A", Scope of Services.

6.2 Additional Services authorized in accordance with Article 4 will be compensated using the hourly rates forth in Schedule "C." Request for payment of Additional Services shall be included with the monthly Basic Services payment request noted in Article 6.1 above.

All Additional Services must be approved by the Project Coordinator, in writing, prior to commencement of same, as noted in Article 4. Under no circumstances shall the "Not to Exceed" fee amount noted in Article 6.1 (and Schedule "B") be exceeded without prior

written approval from the City Project Coordinator. No markup shall be allowed on subcontracted Additional Services.

- 6.3 Request for payment of Reimbursable Expenses shall be included with the monthly Basic Services payment request noted in Article 6. Proper backup must be submitted with all reimbursable requests. No markup or administrative charges shall be allowed on Reimbursable Expenses.
- 6.4 The City and the Consultant agree that:
 - 6.4.1 If the scope of the Project or the Consultant's Services is changed substantially and materially, the amount of compensation may be equitably adjusted by mutual agreement of the parties.
 - 6.4.2 Commencing on December 31, 2006, the Hourly Billing Rate Schedule shown in Exhibit "C" may be adjusted annually based upon the Miami Fort Lauderdale Consumer Price Index issued by the U.S. Department of Labor, Bureau of Labor Statistics. Such adjustment shall be calculated by multiplying the ratio of the April index divided by the previous year's index by the Hourly Rate Schedule to define the new Hourly Rate Schedule. The maximum increase will be limited to three percent (3%).
- 6.5 No retainage shall be made from the Consultant's compensation on account of sums withheld from payments to Contractors.
- 6.6 Method of Billing and Payment. With respect to all Services, Consultant shall submit billings on a monthly basis in a timely manner. These billings shall identify the nature of the work performed; the total hours of work performed by employee category and the respective hourly billing rate associated with the employee category from the Hourly Rate Schedule. In the event subconsultant work is accomplished utilizing the lump sum method, the percentage of completion shall be identified. Billings shall also itemize and summarize Reimbursable Expenses by category. Where written approval of the City is

required for Reimbursable Expenses, a copy of said approval shall accompany the billing for such Reimbursable. When requested, Consultant shall provide backup for past and current invoices that records hours for all Services by employee category and reimbursable by category.

- 6.7 The City shall pay Consultant within forty-five (45) calendar days from receipt of Consultant's proper statement.
- 6.8 Final payment of the Consultant upon Project completion must be approved by the Mayor and City Commission.

ARTICLE 7. CONSULTANT'S ACCOUNTING RECORDS

7.1 Consultant shall keep such records and accounts and require any and all subconsultants to keep such records and accounts as may be necessary in order to record complete and correct entries as to personnel hours charged to the Project, and any expenses for which Consultant expects to be reimbursed. All books and records relative to the Project will be available at all reasonable times for examination and audit by City and shall be kept for a period of three (3) years after the completion of all work to be performed pursuant to this Agreement. Incomplete or incorrect entries in such books and records will be grounds for City's disallowance of any fees or expenses based upon such entries. All books and records which are considered public records shall, pursuant to Chapter 119, Florida Statutes, be kept by Consultant in accordance with such statutes.

ARTICLE 8. OWNERSHIP AND USE OF DOCUMENTS

8.1 Electronic files of all documents, including, but not limited to, tracings, drawings, estimates, and studies completed or partially completed, shall become the property of the City upon completion, termination, or abandonment of the Project. Consultant shall deliver the above documents to the City within thirty (30) days of completion of the Project, or termination of this Agreement, or termination or abandonment of the Project. (Reference attached Schedule "A", entitled "Scope of Services", for additional requirements).

- 8.2 Any re-use of documents by City without written verification or adaptation by Consultant for the specific purpose intended will be without liability to Consultant.
- 8.3 Consultant shall have the right to utilize such documents in the course of marketing, professional presentations, and for other business purposes.

ARTICLE 9. TERMINATION OF AGREEMENT

- 9.1 <u>Termination For Lack Of Funds</u>. The City is a governmental entity and is subject to the appropriation of funds by its legislative body in an amount sufficient to allow continuation of its performance in accordance with the terms and conditions of this Agreement. In the event there is a lack of adequate funding for the Project, the Project may be abandoned or terminated, and the City may cancel this Agreement as provided for herein without further liability to the City.
- 9.2 <u>Termination For Cause.</u> The City may terminate this Agreement for cause in the event that the Consultant (1) violates any provisions of this Agreement or performs same in bad faith or (2) unreasonably delays the performance of the Services or does not perform the Services in a timely and satisfactory manner, upon written notice to the Consultant In the case of termination by the City for cause, the Consultant shall be first granted a thirty (30) day cure period after receipt of written notice from the City.
 - 9.2.1 In the event this Agreement is terminated by the City for cause, the City, at its sole option and discretion, may take over the Services and complete them by contracting with another consultant(s) or otherwise.
 - 9.2.2 Payment only for Services satisfactorily performed by the Consultant and accepted by the City prior to receipt of a Notice of Termination, shall be made in accordance with Article 6 herein and the City shall have no further liability for compensation, expenses or fees to the Consultant, except as set forth in Article 6.

- 9.2.3 Upon receipt of a written Notice of Termination, the Consultant shall promptly assemble and submit to the City, as provided herein or as required in the written notice, all documents, including drawings, calculations, correspondence, and all other relevant materials affected by such termination.
- 9.2.4 In the event of a termination for cause, no payments to the Consultant shall be made for Services not satisfactorily performed. Consultant shall be compensated for all other Services rendered up to the time of receipt of said written termination.
- 9.3 <u>Termination For Convenience.</u> The City, in addition to the rights and options to Terminate for Cause, as set forth herein, or any other provisions set forth in this Agreement, retains the right to terminate this Agreement, at its sole option, at any time, for convenience, without cause and without penalty, when in its sole discretion it deems such termination is in the best interest of the City, upon notice to Consultant, in writing, fourteen (14) days prior to termination. In the event City terminates Consultant's services for its convenience, as provided herein, Consultant shall be compensated for all Services rendered up to the time of receipt of said written termination notice, and for the assembly and submittal to the City of documents for the Services performed, in accordance with Article 6 herein, and the City shall have no further liability for compensation, expenses or fees to the Consultant, except as set forth in Article 6.
- 9.4 <u>Termination By Consultant</u>. The Consultant may only terminate this Agreement for cause in the event that the City willfully violates any provisions of this Agreement, fails to timely perform its responsibilities under this Agreement as established in Schedule "A", Scope of Services, or unreasonably delays payment for the Services, upon written notice to the City, thirty (30) days prior to termination. In that event, payment for Services satisfactorily performed by the Consultant and accepted by the City prior to receipt of a Notice of Termination shall be made in accordance with Article 6 herein. In the case of termination by Consultant for cause, the City shall be granted a thirty (30) day cure period after receipt of written notice from the Consultant.

- 9.4.1 The Consultant shall have no right to terminate this Agreement for convenience of the Consultant.
- 9.5 <u>Implementation of Termination.</u> In the event of termination, either for cause or for convenience, the Consultant, upon receipt of the Notice of Termination, shall (1) stop the performance of Services under this Agreement on the date and to the extent specified in the Notice of Termination; (2) place no further orders or subcontracts except for any that may be authorized, in writing, by the City Project Coordinator, prior to their occurrence; (3) terminate all orders and subcontracts to the extent that they relate to the performance of the Services terminated by the Notice of Termination; (4) promptly assemble and submit, as provided herein, all documents for the Services performed, including drawings, calculations, correspondence, and all other relevant materials affected by the termination; and (5) complete performance of any Services as shall not have been terminated by the Notice Of Termination, And As Specifically Set Forth Therein.
- 9.6 <u>Non Solicitation</u>. The Consultant warrants that it has not employed or retained any company or person, other than an employee working solely for the Consultant, to solicit or secure this Agreement; and that it has not paid, nor agreed to pay any company or other person any fee, commission, gift or other consideration contingent upon the execution of this Agreement. For breach or violation of this warranty, the City has the right to terminate this Agreement without liability to the Consultant for any reason whatsoever.

ARTICLE 10. INSURANCE

10.1 The Consultant shall comply throughout the term of this Agreement with the insurance requirements stipulated herein. It is agreed by the parties that the Consultant shall not commence with work on this Project until satisfactory proof of the following insurance coverage has been furnished to the City. The Consultant will maintain in effect the following insurance coverage:

- (a) Professional Liability Insurance in the amount of One Million (\$1,000,000.00) Dollars per occurrence, with a maximum deductible of \$150,000 per occurrence, \$450,000 aggregate. Consultant shall notify City in writing within thirty (30) days of any claims filed or made against the Professional Liability Insurance Policy.
- (b) Comprehensive General Liability Insurance in the amount of \$1,000,000.00 Single Limit Bodily Injury and Property Damage coverage for each occurrence, which will include products, completed operations, and contractual liability coverage. The City must be named as an additional insured on this policy.
- (c) Worker's compensation and employer's liability coverage if required under Florida law.
- 10.2 The Consultant must give thirty (30) days prior written notice of cancellation or of substantial modifications in the insurance coverage, to the Project Coordinator.
- 10.3 The insurance must be furnished by an insurance company rated B+:VI or better, or its equivalent, according to Bests' Guide Rating Book and must additionally be furnished by insurance companies duly authorized to do business in the State of Florida and countersigned by the company's Florida resident agent.
- 10.4 Consultant shall provide to City a Certificate of Insurance or a copy of all insurance policies required above. City reserves the right to require a certified copy of such policies upon request. All certificates and endorsements required herein shall state that the City shall be given thirty (30) days notice prior to expiration or cancellation of the policy.

ARTICLE 11. INDEMNIFICATION

Consultant herein agrees to indemnify and hold harmless the City, and its officer and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or

intentionally wrongful conduct of the Consultant and other persons employed or utilized by the Consultant in the performance of the Agreement. This Article 11, and Consultant's indemnification contained herein, shall survive the termination and expiration of the Agreement.

ARTICLE 12. VENUE

12.1 This Agreement shall be enforceable in Miami-Dade County, Florida, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for the enforcement of same shall lie in Miami-Dade County, Florida.

12.2 This Agreement shall be governed by, and construed in accordance with, the laws of the State of Florida, both substantive and remedial, without regard to principles of conflict of laws. The exclusive venue for any litigation arising out of this Agreement shall be Miami-Dade County, Florida, if in state court, and the U.S. District Court, Southern District of Florida, if in federal court. BY ENTERING INTO THIS AGREEMENT, CONSULTANT AND CITY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF, THIS AGREEMENT.

ARTICLE 13. LIMITATION OF LIABILITY

13.1 The City desires to enter into this Agreement only if in so doing the City can place a limit on City's liability for any cause of action for money damages due to an alleged breach by the City of this Agreement, so that its liability for any such breach never exceeds the amount of the fees for Services agreed upon under the terms of the Agreement, less any amount(s) paid to Consultant thereunder. Consultant hereby expresses its willingness to enter into this Agreement with Consultant's recovery from the City for any damage action for breach of contract to be limited to a maximum amount of the fee for Services agreed upon under the terms of the Agreement, less the amount of all funds actually paid by the City to the Consultant.

Accordingly, and notwithstanding any other term or condition of this Agreement, Consultant hereby agrees that the City shall not be liable to Consultant for money damages due to an alleged breach by the City of this Agreement in an amount in excess of the amount of fees due under this Agreement, which amount shall be reduced by the amount actually paid by the City to Consultant for any action or claim for breach of contract arising out of the performance or non-performance of any obligations imposed upon the City by this Agreement. Nothing contained in this subparagraph or elsewhere in this Agreement is in any way intended to be a waiver of the limitation placed upon City's liability as set forth in Section 768.28, Florida Statutes.

ARTICLE 14. MISCELLANEOUS PROVISIONS

14.1 The laws of the State of Florida shall govern this Agreement.

14.2 <u>Equal Opportunity Employment Goals</u>: Consultant agrees that it will not discriminate against any employee or applicant for employment for work under this Agreement because of race, color, religion, sex, age, national origin, disability or sexual orientation and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to sexual orientation, race, color, religion, sex, age, national origin, or disability.

14.3 <u>Public Entity Crimes Act</u>: In accordance with the Public Entity Crimes Act (Section 287.133, Florida Statutes), a person or affiliate who is a consultant, who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to the City, may not submit a bid on a contract with the City for the construction or repair of a public building or public work, may not bids or leases of real property to the City, may not be awarded or perform work as a contractor, supplier, subcontractor, or subconsultant under a contract with the City, and may not transact business with the City in excess of the threshold amount provided in Section 287.017, Florida Statutes, for Category Two for a period of 36 months from the date of being placed on the convicted vendor list. Violation of this

Section by Consultant shall result in cancellation and may result in Consultants debarment.

14.4 No Contingent Fee: Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm other than a bona fide employee working solely for Consultant any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, City shall have the right to terminate the Agreement without liability at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

14.5 The Consultant represents that it has made and will make reasonable investigation of all subconsultants to be utilized in the performance of work under this Agreement to determine that they possess the skill, knowledge and experience necessary to enable them to perform the services required. Nothing in this Agreement shall relieve the Consultant of its prime and sole responsibility for the performance of the work under this Agreement.

14.6 The Consultant, its consultants, agents and employees and subconsultants, shall comply with all applicable Federal, State and County laws, the Charter, related laws and ordinances of the City of Miami Beach, and with all applicable rules and regulations promulgated by local, state and national boards, bureaus and agencies as they relate to this Project.

14.7 This Agreement, or any interest herein, shall not be assigned, transferred or otherwise encumbered by Consultant, under any circumstances, without the prior written consent of City.

14.8 This document incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein;

and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written. It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

ARTICLE 15. NOTICE

15.1 All written notices given to City by Consultant shall be addressed to:

City of Miami Beach Planning Department c/o Planning Director Jorge Gomez 1700 Convention Center Drive Miami Beach, Florida 33139

All written notices given to the Consultant from the City shall be addressed to:

Craig Richardson, Vice President and Principal Clarion Associates 1526 E. Franklin Street, Ste 102 Chapel Hill, N. C. 27516

All notices mailed to either party shall be deemed to be sufficiently transmitted if sent by certified mail, return receipt requested.

IN WITNESS WHEREOF, the parties hereto have hereunto caused these presents to be signed in their names by their duly authorized officers and principals, attested by their respective witnesses and City Clerk on the day and year first hereinabove written.

ATTEST:	CITY OF MIAMI BEACH		
City Clerk	Mayor		
•			
	CLARION ASSOCIATES OF COLORADO, LLC.		
ATTEST:			
By:Signature/Title	Signature/Managing Partner		
Signature/True	Signature/Ivianagnig Farther		
Print Name	Print Name		

APPROVED AS TO FORM & LANGUAGE & FOR EXECUTION

eny Attorney

SCHEDULE A

PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF MIAMI BEACH AND CLARION ASSOCIATES

SCOPE OF SERVICES

General Description and Purpose

This Scope of Services involves completion of Part One of a two part planning and implementation process for the City of Miami Beach. The overarching goal of this two part Project is to develop a planning and regulatory system to evaluate the impacts and then appropriately mitigate Major Development Projects within the City.

Part One: The Policy Framework, focuses on the development of a policy framework for the effort. This will be done through three primary tasks. First (Task 1: Project Initiation and Scoping), the Consultant, with assistance from City staff, will establish baseline conditions in the City relevant to the development of a policy framework, and confirm the goals for the project established by the policy makers. This will include the synthesis of information related to the future growth/land use allocation under the City's Comprehensive Plan; evaluation of existing and future transportation conditions (based on existing data as provided by the City), and offstreet parking conditions; evaluation of the existing and future conditions of other public facilities relevant to the effort (schools and parks); evaluation of the City's Concurrency Management System; evaluation of affordable housing conditions; evaluation of relevant fiscal conditions; and evaluation of the existing regulatory environment for Major Development Projects. It will also involve a work session/kick-off meeting with the City Commission to discuss the Project and its schedule, and re-confirm the goals for the Project. Second (Task 2: Policy Options for Planning for, Regulating and Mitigating Major Development Projects), the Consultant will prepare a policy options report that outlines the various planning and regulatory policy options available to the City. It is contemplated that the options will include both planning, regulatory and fiscal options. Third (Task 3: Work session on Policy Options), the Consultant with conduct a work session with the City Commission to discuss the policy options, and then get direction from the Commission on which policy option(s) report they want to implement.

Part Two: Implementation (Not budgeted as part of Scope of Services), involves the actual implementation of the policy option(s) selected by the City Commission. It could include Comprehensive Plan amendments, regulatory modifications, and/or changes to laws and programs related to fiscal issues, and paying for the costs the City incurs to accommodate Major Development Projects. Part Two: Implementation, would only begin after the decision makers have made a decision about the most appropriate Implementation option, and directed Consultant to proceed with a specific implementation option. Because there are a significant variety of Implementation options the City will be considering in this Project, the specific work program for Phase 2: Implementation, cannot be developed until completion of Phase 1.

PART ONE: THE POLICY FRAMEWORK

TASK 1: PROJECT INITIATION AND RECONFIRMATION OF PROJECT GOALS

General

In Task 1, the Consultant will:

- Review the base-line data, appropriate demographic information, studies, and related land use information provided by City staff. This will include:
 - O Data showing the remaining allocation of development under the City's Comprehensive Plan.
 - o The approved but unbuilt development in the City, and its type.
 - o Existing land use conditions.
 - o The future capaCity for development under existing zoning.
- Review the base-line data and projections related to transportation conditions provided by City staff. This will include:
 - o Existing conditions of the road system;
 - o Projected condition of the road system in 5, 10, and 20 years.
 - o Existing condition of the public transportation system.
- Review the base-line data and related information provided by City staff on off-street parking conditions, and future options for off-street parking.
- Review the baseline conditions and projections related to public schools, provided by City staff.
- Review the baseline conditions and projections related to parks, provided by City staff.
- Review baseline conditions related to housing affordability for the work force, provided by City staff.
- Review and evaluate the City's Concurrency Management System.
- Review the City's existing Comprehensive Plan and land development regulations, as they relate to the review of Major Development Projects.
- Review the City's budget and capital improvement plan as it relates to expenditures for roads, schools, and parks.
- Prepare draft Goals for the Project.
- Conduct two days of reconnaissance of the City to see how issues are playing out, and meet with City staff.
- Conduct an initial kick-off meeting/ work session with the City Commission to discuss project goals and related issues.

Specific Tasks

Task 1.1 – Review Base-line Data. and Studies. City staff will transmit to Consultant a summary of all relevant background documents, data, and information for review prior to the reconnaissance and kick-off meeting/work session with the City Commission. These studies and data will include, at a minimum:

- Data showing the remaining allocation of development under the City's Comprehensive Plan.
- The approved but unbuilt development in the City, and its type.

- Existing land use conditions.
- The future capaCity for development under existing zoning.
- Base-line data and projections related to transportation conditions. This will include:
 - o Existing conditions of the road system;
 - o Projected conditions of the road system in 5, 10, and 20 years.
 - o Existing conditions of the public transportation system.
 - o Planned and proposed public transportation improvements.
 - o Existing conditions of the pedestrian and bicycle network.
 - o Planned and programmed improvements for the pedestrian and bicycle network.
- Base-line data and related information on off-street parking conditions, and future options for off-street parking.
- Baseline conditions and projections related to public schools.
- Baseline conditions and projections related to parks.
- Baseline conditions related to housing affordability for the work force.
- The City's concurrency management system.
- The City's existing Comprehensive Plan (including FLUM) and land development regulations.
- The City's budget and capital improvement plan as it relates to expenditures for roads, schools, and parks.
- Regional and other local plans, transportation studies, or park or school studies, as they might relate to the project.
- Demographic data, data on existing population, and population estimates.
- Other relevant background studies and information (e.g., settlement agreements with the Florida Department of Community Affairs (FDCA)).

Task 1.2 – Prepare draft Goals. Based on a review of the background data and discussion with City staff, the Consultant will prepare a draft set of general Goals for the Project. The Goals will be informed by Consultant's review of the background data and studies outlined above. A preliminary draft of the Goals will be provided to City staff for review and comment. City staff will provide Consultant a consolidated set of comments. After City staff review and comment on the draft Goals, Consultant will make mutually agreed changes to reflect comments and suggestions. The Goals will be provided to the public and City Commission prior to the kick-off meeting/work session with City Commission in Task 1.

Task 1.3 – Reconnaissance and Interviews. After review of the data, studies, plans, and regulations provided by City staff in Task 1.1, and preparation of the draft Goals in Task 1.2, Consultant will make Trip 1 to the City to participate in two days of reconnaissance and meetings with City staff, to see how issues are "playing out on the ground." In addition to reconnaissance, Consultant will spend one day interviewing stakeholders and elected officials to get their individual input about their goals for the Project, and insight on particular issues. During the reconnaissance and interviews, Consultant will also document issues and goals of relevance to the project.

Task 1.4 – City Commission Kick-off Meeting/Work session. During Trip 1, Consultant will facilitate and present materials at a kick-off meeting/work session with the City Commission on the Project. The purpose of the kick-off meeting/work session will be to discuss the project goals, work plan (scope of services), process, and schedule, and discuss the baseline conditions

that inform the goal-setting and the policy options. The Consultant will receive input from the City Commission regarding Project goals, the schedule, the baseline data and existing conditions.

Task 1: Responsibilities and Work Product

Consultant Responsibilities/Deliverables:

- Review base-line materials (data, studies, plans, development codes, regulations, etc., sent by City staff).
- ✓ Prepare draft Goals for Project.
- ✓ Participate in reconnaissance to see how issues are playing out on the ground.
- ✓ Meet with City staff to refine work plan/scope of services.
- ✓ Conduct work session/kick-off meeting with City Commission on project Goals and related issues.

City Staff Responsibilities:

- ✓ Deliver two copies of all data, studies, plans, codes, studies, and related documents, as outlined in Task 1.
- ✓ Summarize background data as described in Task 1
- ✓ Review and provide consolidated set of comments on Goals of Project.
- ✓ Set up logistics for, and go with Consultant on reconnaissance.
- ✓ Meet with Consultant to refine work plan/scope of services.
- ✓ Organize work session/kick-off meeting with City Commission.

Trip 1:

✓ One, two day trip to City for reconnaissance, meetings with City staff, interviews, and kick-off meeting/work session with City staff.

Completion Date: One month after City staff provision of base-line materials to Consultant outlined in Task 1 (estimated to be two months after execution of Agreement).

TASK 2: PREPARE POLICY OPTIONS MEMORANDUM

General

In Task 2, the Consultant will:

- o Prepare Policy Options for Planning for, Regulating, and Mitigating Major Development Projects; and
- o Revise the Policy Options memorandum, based on City staff comments.

Specific Tasks

Task 2.1 – Prepare Policy Options Memorandum. After completion of Task 1 and direction from City Commission on the Goals, Consultant will prepare *Policy Options for Planning for, Regulating, and Mitigating Major Development Projects*. It is a Policy Options memorandum that generally does the following:

- Summarizes the existing conditions relevant to the design of a planning and regulatory system to assess the impacts and mitigate Major Development Projects.
- Outlines the Goals of the Project.
- Discusses options available to the City to address the issue, in ways that are consistent with the Goals and legal requirements; and
- Recommends several implementation approaches.

The summary of existing conditions will focus on the following substantive areas as they might be affected by Major Development Projects: land use; roads and off-street parking; public transportation, parks; schools, affordable housing; fiscal conditions and paying for growth; and concurrency management. More specifically, this section will:

- Identify the potential for Major Development Projects to impact the City, given the remaining capaCity for growth and development in relation to what is allocated under the City's Comprehensive Plan and zoning;
- Identify existing land use conditions and the potential to encourage land uses that have the potential to reduce certain public facility impacts (e.g., mixed use development);
- Identify base-line data and projections related to transportation conditions, including existing and projected conditions of the road system, in order to evaluate mitigation options available for transportation impacts;
- Identify base-line data and related information on off-street parking conditions, and future options for off-street parking.
- Identify baseline conditions and projections related to public schools and parks, and the potential for the design of mitigation options.
- Evaluate the City's budget and capital improvement plan as it relates to expenditures for roads, schools, and parks, and how and whether fiscal issues should fit into a planning and mitigation program for Major Development Projects.
- Identify baseline conditions related to housing affordability for the work force and the potential to develop mitigation options.
- Evaluate the City's Concurrency Management System, and its potential relationship to any type of planning and mitigation program for Major Development Projects.
- Evaluate the City's existing Comprehensive Plan (including FLUM) and land development regulations, and their potential relationship to any type of planning and mitigation program for Major Development Projects.
- Identify any other relevant background studies and information (e.g., settlement agreements with the Florida Department of Community Affairs (FDCA)) that might affect the design of a program.

The section on project Goals will be based on the Goals presented and discussed with the City Commission in Task 1, with any changes directed by the City Commission.

The section on policy options will outline different options (tools) available to the City in the design of a planning, regulatory, and mitigation program for Major Development Projects. The options presented will be integrated and coordinated with each other (it is contemplated that the program will probably have multiple parts, so the component parts will be structured and coordinated to be complete and self-supporting). Where other local governments either in Florida or other parts of the nation have used the options (tools) highlighted, the section will provide a brief discussion of the local government's use of the tool, and its pros and cons. Also, and where relevant, this section of the memo will identify any legal, administrative, institutional, or other potential limitations with the tool.

Based on the discussion and evaluation of potential options available to the City in the design of a planning, regulatory, and mitigation program for Major Development Projects in the previous section, the concluding section of the memo will recommend one or two of the options for the City. The options presented will be integrated, coordinated, and self-supporting. The section will

also discuss any legal, administrative, institutional, or other potential limitations with the options, and outline what needs to be done to implement the option. It is contemplated that the option(s) will be broad-based, and could involve both Comprehensive Plan and regulatory amendments, as well as other support studies.

Task 2.2 – Revise Draft Policy Options Memo. A preliminary draft of Policy Options for Planning for, Regulating, and Mitigating Major Development Projects, will be provided to City staff for one round of review and comment. City staff will provide Consultant a consolidated set of comments. After City staff review and comment on the draft Policy Options Memo, Consultant will make mutually agreed changes to reflect comments and suggestions. The memo will then be provided to City staff for distribution to the public and City Commission prior to the worksession with City Commission on the Policy Options Memo in Task 3.

Task 2: Responsibilities and Work Product

Consultant Responsibilities/Deliverables:

- ✓ Prepare draft Policy Options for Planning for, Regulating, and Mitigating Major Development Projects.
- ✓ Revising Policy Options Memo, based on City staff comments.

City Staff Responsibilities:

- Review and provide consolidated set of comments on Policy Options for Planning for, Regulating, and Mitigating Major Development Projects.
- Distribute Policy Options Memo to City Commission and public.

Completion Date: Two and one-half months after completion of Task 1

TASK 3: WORK SESSION ON POLICY OPTIONS MEMO

After completion of *Policy Options for Planning for, Regulating, and Mitigating Major Development Projects*, the Consultant will conduct a work session with the City Commission to discuss, present, and get input from the City Commission and the public on the Policy Options Memo. The purpose of the work session is for Consultant to outline the issues and considerations relevant to the design and implementation of a planning, regulatory, and mitigation program for Major Development Projects for the City, and discuss the recommended option(s), and receive direction on the appropriate Implementation option from the City Commission.

It is only after receipt of direction from City Commission that Consultant can proceed to Phase 2: Implementation.

Task 3: Responsibilities and Work Product

Consultant Responsibilities/Deliverables:

✓ Conduct work session on Policy Memo with City Commission, receive input and direction.

City Staff Responsibilities:

✓ Organize work session with City Commission.

Trip:

✓ One, one day trip to City for work session with City Commission on Policy Memo.

Completion Date: Three weeks after completion of Task 2.

PART TWO: IMPLEMENTATION

Part Two: Implementation, involves the actual implementation of the policy option(s) selected by the City Commission in Task 3. It could include Comprehensive Plan amendments, regulatory modifications, and/or changes to laws and programs related to fiscal issues, and paying for the costs the City incurs to accommodate Major Development Projects.

Part Two: Implementation, only begins after the decision makers have made a decision about the most appropriate Implementation option(s), and directed Consultant to proceed with a specific implementation option. Because there are a significant variety of Implementation options the City will be considering in this Project, the specific work program for Phase 2: Implementation, cannot be developed until completion of Phase 2. It can be developed either concurrent with or shortly after the City Commission's consideration of *Policy Options for Planning for, Regulating, and Mitigating Major Development Projects*.

SCHEDULE B

PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF MIAMI BEACH AND CLARION ASSOCIATES

CONSULTANT COMPENSATION

In consideration of the services to be performed by the Consultant under this Agreement, Committee agrees to pay Consultant an amount not to exceed \$49,852.00. See schedule below for compensation by task.

TASKS	COMPENSATION
PART ONE: THE POLICY FRAMEWORK	
Task 1: Project Initiation/Project Goals	\$19.101.00
Task 2: Prepare Policy Options Memorandum	\$21,390.00
Task 3: Work Session on Policy Options Memo	\$9,361.00

SCHEDULE C

PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF MIAMI BEACH AND CLARION ASSOCIATES

HOURLY BILLING RATE SCHEDULE

Classification	Hourly Billing Rate (FY 2006)			
CLADION ASSOCIATES				
CLARION ASSOCIATES	¢100 001			
Principal / Project Manager	\$190.00 per hour			
Principal Advisor	\$210.00 per hour			
Associate	\$110.00 per hour			
Associate	\$65.00 per hour			
TISCHLER ASSOCIATES				
Principal / President	\$200.00 per hour			
Principal/Vice-President	\$190.00 per hour			
Senior Associate	\$185,00 per hour			
Associate	\$160.00 per hour			
GLATTING JACKSON				
Principal 4	\$225 per hour			
Transportation Engineer 4	\$130 per hour			
Transportation Engineer 3	\$110 per hour			
Transportation Engineer 1	\$75 per hour			
Principal 6	\$275 per hour			
Principal 2	\$190 per hour			
Planner 4	\$\$130 per hour			
Planner 4	\$ 130 per hour			
Graphic Artist 2	\$85 an hour			
Administrative Assistant	\$60 per hour			

SCHEDULE D

PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF MIAMI BEACH AND CLARION ASSOCIATES

PROJECT SCHEDULE

Task	Description: Completion Date		
<u> </u>	PART ONE: THE POLICY	FRAMEWORK	
1	Project Initiation and Reconfirmation of	One month after City staff provision of	
	Project Goals	baseline materials to Consultant outlined in Task 1 (estimated to be two months after Notice to Proceed	
2	Prepare Policy Options Memorandum	Two and one-half months after completion of Task 1	
3	Work Session on Policy Options Memorandum	Three weeks after Completion of Task 2	
	PART TWO: IMPLEM	ENTATION	
Wor	k Program and schedule to be determined after Framework	*	

The above durations include, in working days, the response time of the City and the Project Manager.

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RESOL	UTION N	IO.	

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, ACCEPTING THE RECOMMENDATION OF THE CITY MANAGER PERTAINING TO THE RANKING OF FIRMS; AUTHORIZING THE ADMINISTRATION TO NEGOTIATE AGREEMENTS, PURSUANT TO REQUEST FOR PROPOSALS (RFP) NO. 16-05/06, FOR EMERGENCY DISASTER DEBRIS MONITORING SERVICES FOR THE CITY OF MIAMI BEACH; AND FURTHER AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AGREEMENTS, UPON COMPLETION OF SUCCESSFUL NEGOTIATIONS, WITH ANY OR ALL OF THE FOLLOWING THREE (3) FIRMS: 1) BECK DISASTER AND RECOVERY, INC.; 2)MALCOLM PIRNIE, INC.; AND 3) CAMP DRESSER AND MCKEE, INC.

WHEREAS, the Federal Emergency Management Agency (FEMA) provides public assistance funds for debris clearance, removal and disposal operations; and

WHEREAS, in order for the City of Miami Beach to receive assistance for disaster debris removal, the City must implement a debris removal monitoring service; and

WHEREAS, on April 11, 2006, the Mayor and City Commission approved the issuance of Request for Proposal (RFP) 16-05/06 for Emergency Debris Monitoring Services; and

WHEREAS, the purpose of this RFP was to select several firms that could provide Emergency Debris Monitoring Services as required by the City and FEMA; and

WHEREAS, RFP No. 16-05/06 was issued on April 12, 2006 with an opening date of June 9, 2006; and

WHEREAS, eleven (11) proposals were received in response to the RFP, by the following firms:

- American Consulting Engineers of Florida;
- Avart. Inc.:
- Beck Disaster Recovery, Inc.;
- Camp Dresser and McKee, Inc. (CDM);
- Consul Tech Construction Management, Inc.;
- CRB Geological & Environmental Services, Inc.;
- GBF Engineering, Inc.;
- Keith & Schnars, PA;
- Malcolm Pirnie, Inc.;
- Post Buckley Schuh and Jernigan (PBS & J);
- Tubosun Giwa & Partners, Inc.; and

WHEREAS, an Evaluation Committee was appointed by the City Manager via Letter to Commission (LTC) No. 156-2006, consisting of the following individuals:

- James Sutter, Internal Auditor, City of Miami Beach, (Chair);
- Jackie Fernandes, Middle Beach Resident, and Neighborhood Leadership Academy Graduate;
- · Fernando Vazquez, City Engineer, City of Miami Beach;
- Suzanne Stolar, South Beach Resident, and Neighborhood Leadership Academy Graduate;
- · Cliff Leonard, Risk Manager, City of Miami Beach;
- · Alberto Zamora, Sanitation Director, City of Miami Beach;
- Gisenia Gonzalez, South Beach Resident, and Neighborhood Leadership Academy Graduate; and

WHEREAS, on June 20, 2006, the Evaluation Committee convened and discussed the qualifications and credentials as well as various options in ranking all eleven (11) responsive firms; and

WHEREAS, the Evaluation Committee was unable to rank all firms on the first meeting, so a second meeting was scheduled for June 26, 2006 to shortlist and finalize the ranking of firms; and

WHEREAS, on June 26, 2006, the Evaluation Committee convened and unanimously shortlisted the following six (6) firms to provide presentations to the Evaluation Committee on June 29, 2006:

- American Consulting Engineers of Florida;
- Beck Disaster Recovery, Inc.;
- Camp Dresser and McKee, Inc. (CDM);
- CRB Geological & Environmental Services, Inc.;
- Malcolm Pirnie, Inc.;
- Post Buckley Schuh and Jernigan (PBS & J); and

WHEREAS, Post Buckley Schuh and Jernigan (PBS&J) communicated to the City's Procurement Division, their request to withdraw from this RFP process and acknowledged that they would not receive any further consideration in reference to this RFP; and

WHEREAS, on June 29, 2006, the Evaluation Committee convened and after all firms provided their presentations, the Committee members discussed the firms qualifications, experience, and competence, and ranked the firms accordingly:

- 1) Beck Disaster Recovery, Inc.;
- 2) Malcolm Pirnie, Inc.;
- 3) Camp Dresser and McKee, Inc. (CDM);
- 4) CRB Geological & Environmental Services, Inc.;
- 5) American Consulting Engineers of Florida;
- 6) Post Buckley Schuh and Jernigan (PBS & J); and

WHEREAS, the Committee voted to recommend to the City Manager that the Administration proceed to negotiate contracts with the top three ranked firms; and

WHEREAS, the City Manager has reviewed the Evaluation Committee's recommendation, and concurs with same.

NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND THE CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that the Mayor and City Commission hereby accept the recommendation of the City Manager pertaining to the ranking of firms and authorize the Administration to negotiate agreements, pursuant to Request for Proposals (RFP) No. 16-05/06, for Emergency Disaster Debris Monitoring Services for the City of Miami Beach; and further authorize the Mayor and City Clerk to execute the agreements, upon completion of successful negotiations, with any or all of the following three (3) firms: 1) Beck Disaster and Recovery, Inc.; 2)Malcolm Pirnie, Inc.; and 3) Camp Dresser and Mckee, Inc.

	PASSED and ADOPTED this _	day of	, 2006.	
ATTEST:				
ATTEST.			MAYOR	
CITY CLEF	RK			

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APPROVED AS TO FORM & LANGUAGE & FOR EXECUTION

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RESOL	LUTION	No.	

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, ADOPTING AND APPROPRIATING THE FIRST AMENDMENT TO THE POLICE CONFISCATION TRUST FUND BUDGET FOR FISCAL YEAR (FY) 2005/06, IN THE AMOUNT OF \$72,335, TO BE FUNDED FROM THE PROCEEDS OF THE STATE CONFISCATED FUNDS.

WHEREAS, Section 932.7055, Florida Statutes, addresses the purpose and procedures to be utilized for the appropriation and expenditures of the Police Confiscation Trust Fund; and

WHEREAS, the Chief of Police of the City of Miami Beach has determined that the need for appropriation and expenditures exist, and the appropriation and expenditure of forfeiture funds is in compliance with Section 932.7055, Florida Statutes, and the Guide to Equitable Sharing of Federally Forfeited Property for Local Law Enforcement Agencies; and

WHEREAS, funds in the amount of \$72,335 are available in the Police Confiscation Trust Fund, and the current budget, increases and amended budget are as follows:

	CURRENT	INCREASE	AMENDED	
	BUDGET		BUDGET	
STATE-	\$ 101,700	\$ 72,335	\$ 174,035	
FEDERAL-	<u>131,000</u>	<u>o</u>	\$ <u>131,000</u>	
TOTAL	\$ 232,700	\$ 72,335	\$ 305,035.	

NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that the Mayor and City Commission hereby adopt and appropriate the First Amendment to the FY 2005/06 Police Confiscation Trust Fund Budget for the City of Miami Beach, in the amount of \$72,335, to be funded from the proceeds of the State Confiscation Funds as reflected in the attached Exhibit "A".

PASSED and ADOPTED this	day of	2006.
ATTEST:	Mayor	
City Clerk		APPROVED AS TO FORM & LANGUAGE & FOR EXECUTION

Agenda Item_

Date 7-12-06

EXHIBIT "A"

MIAMI BEACH POLICE DEPARTMENT CONFISCATION TRUST FUND FIRST AMENDMENT FISCAL YEAR 2005/06

STATE FUNDS:

GR/	٩N٦	· MA	١TC	H	ES:
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LOCAL LAW ENFORCEMENT BLOCK GRANT 2005 (LLEBG) Additional funds are required to sufficiently meet the grant match requirement. The original amount requested on Resolution Number 2005-62001 on September 21, 2006 was an estimate as the grant had not been approved when originally submitted. The amount above represents the balance owed.	\$ 2,929
BYRNE GRANT 2005: Electronic ticketing initiatives The original amount requested on Resolution Number 2005-62001 on September 21, 2006 was an estimate as the grant had not been approved when originally submitted. The amount above represents the funds which were not required and are savings.	\$ (2,635)
BYRNE GRANT 2006: Electronic ticketing initiatives	\$ 3,501
BULLETPROOF VEST PARTNERSHIP GRANT, FY 2005/06 Additional funds required for the projected expenditures through the end of Fiscal Year 2005/06. This amount represents a fifty percent (50%) match to the Bulletproof Vest Partnership Grant.	\$ 5,000
SUB-TOTAL OF GRANT MATCHES:	\$ 8,795
OTHER INITIATIVES:	
CRIME PREVENTION INITIATIVES & SCHOOL LIAISON PROJECTS Additional Crime Prevention Funds required for Fiscal Year 2005/06 initiatives. The Crime Prevention Unit coordinates various community programs such as Neighborhood and Business Crimewatch, Police Community Relations Team, Citizens on Patrol, Security Communication Assistance Network (SCAN) and The Citizens' Police Academy. The School Liaison personnel will implement new programs for the elementary schools of Miami Beach.	\$ 8,500
ACCREDITATION for operating expenses, travel and initiatives related to both State and National re-accreditation.	\$ 16,500
DADE COUNTY COURT STAND-BY PROGRAM, 2005 Balance owed to the Dade County Chief's Association. During previous fiscal years, the Department budgeted and expended funds based on estimated services provided by the Dade Chief's Association. Starting in FY 2005/06, the Dade Chief's Association began billing participating agencies using data which represented actual services provided; therefore, the figure above represents the balance owed to Dade Chief's after the initial, partial payment of \$19,000 in December 2005.	\$ 23,040
MIAMI BEACH POLICE ATHLETIC LEAGUE Annual Summer Job Program	\$ 13,000
ORGANIZATIONAL DEVELOPMENT TRAINING AND EXECUTIVE TRAVEL Executive travel for required events or meetings related to the International Association of Chief's of Police and other organizational development initiatives and trainings.	\$ 2,500
SUB-TOTAL OF OTHER INITIATIVES:	\$ 63,540

TOTAL STATE FUNDS:

72,335

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, ADOPTING THE FIRST BUDGET AMENDMENT TO THE POLICE SPECIAL REVENUE ACCOUNT FOR FISCAL YEAR (FY) 2005/06, IN THE AMOUNT OF \$9,580; SUCH ACCOUNT FUNDED BY UNCLAIMED EVIDENCE CURRENTLY HELD IN THE POLICE SPECIAL REVENUE ACCOUNT.

WHEREAS, Section 705.105, Florida Statutes, "Procedures for Unclaimed Evidence", provides that title to unclaimed evidence in the custody of the court from a criminal proceeding or seized as evidence by and in the custody of a law enforcement agency, shall vest permanently in the law enforcement agency sixty (60) days after the conclusion of the proceedings; and

WHEREAS, such funds have been in the custody of the Police Property Management Unit past the sixty (60) day waiting period, and these funds have now been placed in the Police Special Revenue Account Fund, as provided by Resolution No. 90-19931, adopted on March 7, 1990.

NOW THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that the Mayor and City Commission hereby adopt the First Budget Amendment to the Police Special Revenue Account for FY 2005/06, in the amount of \$9,580; such account funded by unclaimed evidence currently held in the Police Special Revenue Account.

		RRENT DGET	INC	CREASE	MENDED JDGET
	\$	36,600	\$	9,580	\$ 46,180
PASSI	ED a	nd ADOPTED	this	day of	 2006.
ATTEST:				MAYOR	
City Clerk					APPROVED AS TO FORM & LANGUAGE & FOR EXECUTION

Agenda Item

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City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

COMMISSION MEMORANDUM

TO:

Mayor David Dermer and Members of the City Commission

FROM:

Jorge M. Gonzalez, City Manager For JMG JC 46-

DATE:

July 12, 2006

SUBJECT: SUPPLEMENT TO - AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 46 OF THE CITY CODE, ENTITLED "ENVIRONMENT," BY AMENDING ARTICLE IV, ENTITLED "NOISE," BY AMENDING SECTION 46-ENTITLED "TEMPORARY PERMITS," BY **AMENDING** PROCEDURES AND REQUIREMENTS FOR CONSTRUCTION ACTIVITIES AND PROVIDING EXCEPTIONS THERETO, PROHIBITING CONSTRUCTION NOISE ON SUNDAYS AND NATIONAL HOLIDAYS IN ALL NON-ZONING DISTRICTS, **EXCEPT** UNDER RESIDENTIAL CIRCUMSTANCES AND AS AUTHORIZED BY THE BUILDING OFFICIAL, PROHIBITING CONSTRUCTION IN RESIDENTIAL ZONING DISTRICTS BEFORE 10:00 A.M. AND AFTER 4:00 P.M. ON SUNDAYS AND NATIONAL HOLIDAYS AND PROHIBITING CONSTRUCTION NOISE BETWEEN 10:00 A.M. AND 4:00 P.M. ON SUNDAYS AND NATIONAL HOLIDAYS, PROVIDING PROVISIONS FOR THE VIOLATION AND REVOCATION OF TEMPORARY PERMITS, AND PROVIDING SUBHEADING TITLES TO BE ENTITLED (A) "REQUIREMENTS AND PROCEDURES," (B) "VIOLATION OF TEMPORARY PERMITS" AND (C) 'REVOCATION OF TEMPORARY PERMITS;" AMENDING SECTION 46-158, ENTITLED "ENFORCMENT BY CODE INSPECTORS; NOTICE OF VIOLATION, WARNINGS" BY AMENDING SUBSECTION (A) TO CLARIFY THE NOTICE OF VIOLATION PROVISIONS. AMENDING SUBSECTION (B)(2) TO PROVIDE CLARIFICATION AS TO THE NUMBER OF WRITTEN WARNINGS IN ALL ZONING DISTRICTS EXCEPT SINGLE FAMILY ZONING DISTRICTS; PROVIDING FOR ONE WRITTEN WARNING IN SINGLE FAMILY ZONING DISTRICTS PRIOR TO A NOTICE OF VIOLATION AND PROVIDING THAT A VIOLATION, INSTEAD OF A WRITTEN WARNING, SHALL BE ISSUED IF A VIOLATOR IS ALSO BEING CITED FOR AN ILLEGAL COMMERCIAL OR NON-PERMITTED, NON-RESIDENTIAL USE IN A RESIDENTIAL ZONING DISTRICT; AMENDING SECTION 46-159 ENTITLED "FINES AND PENALTIES FOR VIOLATION: APPEALS: ALTERNATE MEANS OF ENFORCEMENT," BY PROVIDING FINES AND PENALTIES FOR ANY OFFENSE WHICH WAS COMMITTED WHILE THE VIOLATOR WAS ALSO ENGAGED IN AN ILLEGAL COMMERCIAL OR NON-PERMITTED, NON-RESIDENTIAL USE IN A RESIDENTIAL ZONING DISTRICT; PROVIDING FOR CODIFICATION,

> Agenda Item Date

Attached please find suggested revisions to the Noise Ordinance that is before the City Commission as item **R5D** on the July 12, 2006 agenda. **The attached Ordinance is suggested in lieu of the original Commission agenda item.**

The changes have been suggested in order to make reading and subsequent enforcement easier.

Suggested changes do not change either intent or requirements identified in the First Reading version and include:

- In both the commercial and residential zoning districts a simplification of the standard relating to fully utilizing available hours for a temporary noise permit is suggested. The revised language is easier to read and apply and will still capture the Commission intent of not allowing added construction time for convenience. The reasonable alternatives and the newly revised community needs standard will address the Commission concern fully.
- The section on the Building Officials ability to grant temporary permits has been clarified to more easily express the original intent of an emergency condition or when a construction technical necessity exits.
- The section on the Building Officials ability to grant temporary permits has also been modified to change the notice of a temporary permit from may to shall.

A version of the Ordinance that tracks the suggested language change is included for ease of reference.

JMG\RCM\sam
F:\cmgr\\$ALL\BOB\NoiseOrd7-12-06commemosupplement.doc

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING OF THE CITY CODE. ENTITLED CHAPTER 46 "ENVIRONMENT." BY AMENDING ARTICLE IV, ENTITLED "NOISE," BY AMENDING SECTION 46-156, ENTITLED "TEMPORARY PERMITS," BY AMENDING THE PROCEDURES AND REQUIREMENTS FOR CONSTRUCTION ACTIVITIES AND EXCEPTIONS THERETO, PROHIBITING CONSTRUCTION NOISE ON SUNDAYS AND NATIONAL HOLIDAYS IN ALL NON-RESIDENTIAL ZONING DISTRICTS, EXCEPT UNDER CERTAIN CIRCUMSTANCES AND AS AUTHORIZED BY THE BUILDING OFFICIAL, PROHIBITING CONSTRUCTION IN RESIDENTIAL ZONING DISTRICTS BEFORE 10:00 A.M. AND AFTER 4:00 P.M. ON SUNDAYS AND NATIONAL HOLIDAYS AND PROHIBITING CONSTRUCTION NOISE BETWEEN 10:00 A.M. AND 4:00 P.M. ON SUNDAYS AND NATIONAL HOLIDAYS, PROVIDING PROVISIONS FOR THE VIOLATION AND REVOCATION OF TEMPORARY PERMITS, AND PROVIDING SUBHEADING TITLES TO BE ENTITLED (A) "REQUIREMENTS AND PROCEDURES," (B) "VIOLATION OF TEMPORARY PERMITS" AND (C) "REVOCATION OF TEMPORARY PERMITS;" AMENDING SECTION 46-158. ENTITLED "ENFORCEMENT BY CODE INSPECTORS; NOTICE OF VIOLATION, WARNINGS" BY AMENDING SUBSECTION (A) TO CLARIFY THE NOTICE OF VIOLATION PROVISIONS, SUBSECTION (B)(2) TO **PROVIDE AMENDING** CLARIFICATION AS TO THE NUMBER OF WRITTEN WARNINGS IN ALL ZONING DISTRICTS EXCEPT SINGLE FAMILY ZONING DISTRICTS; PROVIDING FOR ONE WRITTEN WARNING IN SINGLE FAMILY ZONING DISTRICTS PRIOR TO A NOTICE OF VIOLATION AND PROVIDING THAT A VIOLATION, INSTEAD OF A WRITTEN WARNING, SHALL BE ISSUED IF A VIOLATOR IS ALSO BEING CITED FOR AN ILLEGAL COMMERCIAL OR NON-PERMITTED, NON-RESIDENTIAL USE IN A RESIDENTIAL ZONING DISTRICT; AMENDING SECTION 46-159 ENTITLED "FINES AND PENALTIES FOR VIOLATION; APPEALS; ALTERNATE MEANS OF ENFORCEMENT," BY PROVIDING FINES AND PENALTIES FOR ANY OFFENSE WHICH WAS COMMITTED WHILE THE VIOLATOR WAS ALSO ENGAGED IN AN ILLEGAL COMMERCIAL OR NON-PERMITTED, NON-RESIDENTIAL USE IN A RESIDENTIAL ZONING DISTRICT; PROVIDING FOR CODIFICATION, REPEALER, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, noise has been a topic of concern within the City of Miami Beach for many years and has recently been the subject of recent City Code amendment to address modified enforcement and legislative solutions; and

WHEREAS, the purpose of the City's Noise Ordinance is to obtain compliance with the prohibition on unnecessary and excessive noise in the City before imposing fines and other penalties; and

WHEREAS, in order to strike a balance between the concerns of the business community and residents, a warning and violation system has been developed which takes into account the diverse character of the City; and

WHEREAS, the provisions in this Ordinance will serve to further address the noise concerns of the City and its residents relative to construction projects and with regard to illegal commercial or non-permitted, non-residential, uses in residential zoning districts, to preserve the quality of life in all City neighborhoods, and to provide clarification of the City Commission's original intent relative to the enforcement of noise violations.

NOW, THEREFORE, BE IT DULY ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH AS FOLLOWS:

SECTION 1. That Section 46-156 of Article IV of Chapter 46 of the Miami Beach City Code is hereby amended as follows:

Chapter 46

ENVIRONMENT

ARTICLE IV. NOISE

Sec. 46-156. Temporary permits.

Requirements and Procedures (a)

The City manager is authorized to issue a temporary permit to allow noise when produced by a temporary use or activity as provided in this section. The City manager may prescribe any reasonable conditions necessary to minimize any adverse effect upon the community. A permit granted under this article shall contain all conditions upon which the permit has been granted, including the period of time for which the permit has been granted. Such relief may be granted in the following situations:

- (1) Code compliance in progress. When an applicant is utilizing best efforts to comply with the noise restrictions in this article, but additional time is required for the applicant to modify his activity to comply and no reasonable alternative is available to the applicant, such permits may be granted for a period of time not to exceed ten consecutive days.
- (2) Construction. When construction activities pursuant to a valid building permit cannot be carried out in a manner which would comply with section 46-152, notwithstanding that all equipment is operated in accordance with manufacturer's specifications, is in good repair and utilizes all noise baffling methods as specified by the manufacturer, such activities shall occur only as follows:
 - a. Between the hours of 7:30 a.m. and 6:30 p.m., and between the hours of 7:30 a.m. and 7:30 p.m. during daylight savings time, on any day in areas zoned as CCC, GU, I-1, MR, CPS-1, CPS-2, CPS-3, CPS-4, RO, WD-1, WD-2, GC, HD, MXE, CD-1, CD-2 and CD-3. No construction noise shall be permitted on Sundays or on national holidays in the zoning districts set forth in this subsection. However, the City manager may authorize any necessary construction activities to occur earlier and/or later than as otherwise provided in this subsection based upon a finding that 1) there are no reasonable alternatives, and 2) there are no prior code violation adjudications or fines and no pending construction noise violation cases against the property owner. contractor, or the construction site, and 3) There is a significant community need, public purpose or benefit. The work authorized by the City manager may be conditioned upon reasonable notice to surrounding property owners and tenants. Permits issued pursuant to such authorization shall not exceed seven consecutive days. No construction shall be permitted on Sundays or on national holidays in the zoning districts set forth in this subsection, notwithstanding compliance with Section 46-152.
 - b. Between the hours of 8:00 a.m. and 6:00 p.m. on weekdays and 10:00 a.m. and 4:00 p.m. on Saturdays in areas zoned as RM-1, RM-2, RM-3, RM-PRD, RPS-1, RPS-2, RPS-3, RPS-4, RMPS-1, RS-1, RS-2, RS-3, RS-4, TH and in any exclusively residential zoning district not otherwise specified in this subsection and within three hundred feet of any of these zoning districts. No construction shall be permitted on Sundays or on national holidays in the zoning districts set forth in this subsection or within 300 feet thereof. On Sundays and national holidays, construction shall not be permitted between 10:00 a.m. or after 4:00 p.m. and construction noise shall not be permitted between 10:00 a.m. and 4:00 p.m. in the zoning districts set forth in this subsection or within 300 feet thereof. However, the City manager may authorize any necessary construction activities to occur earlier and/or later

Deleted: all permitted construction days and hours are already being fully utilized in accordance with industry standards and practice and/or in recognition of

Deleted: s, including but not limited to traffic flows for which a particular sequencing of construction is necessitated

than as otherwise provided in this subsection based upon a finding that 1) there are no reasonable alternatives, and 2) there are no prior code violation adjudications or fines and no pending construction noise violation cases against the property owner, contractor, or construction site, and 3 there is a significant community need, public purpose or benefit. The work authorized by the City manager may be conditioned upon reasonable notice to surrounding property owners and tenants. Permits issued pursuant to such authorization shall not exceed three consecutive days. No construction shall be permitted on Sundays or on national holidays in the zoning districts set forth in this subsection, notwithstanding compliance with section 46-152.

- c. The issuance of a temporary permit is a privilege and does not constitute a right or expectation that said permit will remain in effect. Any permits issued pursuant to (2)a-b, shall not constitute or be deemed precedent for the granting of any future permits.
- d. Notwithstanding the provisions of (2)a-b, temporary permits shall be subject to authorization by the building official under emergency circumstances or when the Building Official determines that for reasons of technical necessity, work earlier or later than the time frames specified in (2)a-b or on any day (including Sundays or national holidays) is required. The work authorized by the building official pursuant to this subsection shall be conditioned upon reasonable notice to surrounding property owners and tenants.
- (3) Special events and film and print permits. A film permit issued pursuant to section 12-1, or a special event permit issued pursuant to section 12-5 may be exempted from the requirements of section 46-152 upon specific compliance with sections 12-1(9) or 12-5(8), as applicable.

(b) Violation of Temporary Permit

Failure to comply with any condition of a temporary permit issued pursuant to this section shall constitute a violation and shall result in enforcement procedures and penalties as set forth in sections 46-159 and 46-160.

(c) Revocation of Temporary Permits

Any temporary permit may be immediately revoked pursuant to the procedures set forth in sections 102-383 and 102-385 if the City Manager finds that an emergency condition exists involving serious danger to the public health, safety, or welfare; if the permit holder failed to disclose or misrepresented material information in the permit application

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or in the permit application process; or that there was a failure to comply with any condition of a particular temporary permit.

SECTION 2. That Section 46-158 of Article IV of Chapter 46 of the Miami Beach City Code is hereby amended as follows:

Sec. 46-158. Enforcement by code inspectors; notice of violation; warnings.

- (a) Notice of Violation. If the code inspector observes a violation of this article, the inspector shall issue a notice of violation to the violator, and a courtesy copy of the violation shall be provided to the occupational license holder, except as otherwise provided in subsection (b), and inform the violator that he must immediately cease the violation and that the violator will be subject to penalties if the violation continues and that a notice of violation will be issued to the violator as provided in Chapter 30 of this Code. The notice shall inform the violator of the include the following information:
 - (1) Name of the violator.
 - (2) Date and time of violation.
 - (3) Nature of the violation.
 - (4) Amount of fine or other penalty for which the violator may be liable pursuant to section 46-159 of this Code or as otherwise provided by law.
 - (5) Instructions and due date for paying the fine.
 - (6) Notice that the violation may be appealed by filing a written request for an administrative hearing with the clerk of the special master within ten days after service of the notice of violation, that failure to do so shall constitute an admission of the violation and waiver of the right to a hearing, and that unpaid fines will result in the imposition of liens which may be foreclosed by the city.

The notice shall also inform the violator that repeat violations of this article will result in the imposition of larger fines and may also result in revocation, suspension, or the imposition of restrictions on an occupational license, and/or certificate of use, or accessory use, and/or injunctive proceedings as provided by law. The notice shall be signed by the code inspector who witnessed the violation.

- (b) Warnings.
 - (1) Oral Warnings

If a code inspector observes a violation of this article without a complaint having been made, the inspector may first issue one oral courtesy warning per day and inform the violator that the violator will be subject to penalties if the violation continues.

(2) Written Warnings

A code inspector shall first issue a written warning to immediately cease the violation prior to issuing a notice of violation: if no more than

<u>a) unless</u> three written warnings have been issued in the 12 months preceding the date of violation <u>and the violation occurs in any zoning district except a single family zoning district; or</u>

b) unless one written warning has been issued in the 12 months preceding the date of violation and the violation occurs in a single family zoning district.

The written warning shall be substantially in the same form as the notice of violation as stated in section 46-158 (a) above. Failure to correct the violation within fifteen minutes following the issuance of a written or oral warning, shall result in the issuance of a notice of violation pursuant to this Article.

A Ecode Inspector shall not issue a written warning, and instead shall issue a notice of violation, to any person, entity or establishment who: 1) in any one day has already been issued a written warning as specified in 46-158 or 2) in any 12 month period has exceeded any of the three warning limits specified in 46-158(b)(2) or 3) is also being cited for an illegal commercial or non-permitted non-residential use in a residential zoning district.

(c) Owner's Responsibility to Provide Current Address.

The holder of the occupational license for the premises where a violation or warning is issued shall have the responsibility to keep the Ccity advised of the current address of the owner of the premises.

SECTION 4. That Section 46-159 of Article IV of Chapter 46 of the Miami Beach City Code is hereby amended as follows:

Sec. 46-159. Fines and penalties for violation; appeals; alternate means of enforcement.

- (a) Fines and penalties. The following civil fines and penalties shall be imposed for violations of this chapter:
 - (1) If the offense is the first offense, \$250.00 fine.

- (2) If the offense is the second offense within the preceding 18 months, \$1,000.00 fine.
- (3) If the offense is the third offense within the preceding 18 months, \$2,000.00 fine.
- (4) If the offense is the fourth offense within the preceding 18 months, one weekend (noon Friday through noon Monday) occupational license conditions and/or accessory use restrictions shall be imposed limiting the ability to produce any live or amplified sound at that portion of the premises that caused the violation, in addition to a \$3,000.00 fine.
- (5) If the offense is the fifth offense within the preceding 18 months, two weekend (noon Friday through noon Monday) occupational license conditions and/or accessory use restrictions shall be imposed limiting the ability to produce any live or amplified sound at that portion of the premises that caused the violation, in addition to a \$5,000.00 fine.
- (6) If the offense is the sixth or greater offense within the preceding 18 months, it shall be considered an habitual offender offense with penalties and fines imposed pursuant to Section 46-159(h).
- (7) The first time an offense is committed while the violator was also engaged in an illegal commercial or non-permitted, non-residential use in a residential zoning district, \$1,000.00, notwithstanding the fine provision in (1) above.
- (8) The second or any subsequent time an offense is committed while the violator was also engaged in an illegal commercial or non-permitted, non-residential use in a residential zoning district, \$5,000.00, notwithstanding the fine provisions in (2)-(4) above.

SECTION 5. CODIFICATION

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this ordinance shall become and be made a part of the Code of the City of Miami Beach, Florida. The sections of this ordinance may be renumbered or re-lettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

SECTION 6. REPEALER

	All	ordinances	or	parts	of	ordinances	in	conflict	herewith	be	and	the	same	are	hereby
repealed	l.														

SECTION 7. SEVERABILITY

If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

SECTION 8. EFFECTIVE DATE

	PASSED and ADOPTED this day	of	, 2006.
	This Ordinance shall take effect on the	day of	, 2006.
ATTI	EST:		
			MAYOR
	CITY CLERK		

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A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, FOLLOWING A DULY NOTICED PUBLIC HEARING TO HEAR PUBLIC COMMENT ON SAME, AND HAVING CONSIDERED THE CITY ADMINISTRATION'S RECOMMENDATION AND THE CRITERIA FOR GRANTING REVOCABLE PERMITS PURSUANT TO SECTION 82-94 OF THE MIAMI BEACH CITY CODE, DENYING AN AFTER-THE-FACT REVOCABLE PERMIT IN FAVOR OF THE APPLICANTS, MR. MICHAEL R. BUCKNER AND HIS WIFE, MARGO BUCKNER, AS OWNERS OF THE PROPERTY LOCATED AT 6120 LA GORCE DRIVE, FOR RETAINING AN IRON GATE, COLUMNS, HEDGES, PAVED WALKWAY, PAVED DRIVEWAY, A CANVAS CANOPY AND PORTION OF A WOOD DECK WITHIN THE ADJACENT APACHE AVENUE CITY RIGHT-OF-WAY; FURTHER REQUIRING REMOVAL OF ENCROACHMENTS AND RESTORATION OF PORTIONS OF THE PUBLIC STREET END AFFECTED BY SUCH ENCROACHMENTS, IN SUCH MANNER AS SHALL BE DEEMED NECESSARY BY THE CITY ADMINISTRATION.

WHEREAS, Michael R. Buckner and his wife, Margo Buckner (Applicants), own the residential property located at 6120 La Gorce Drive (Property), adjacent to the City right-of-way on Apache Avenue, which they purchased in April 2004; and

WHEREAS, the Property has encroachments consisting of an iron gate with two columns, a Ficus hedge, a canvas canopy and the corner of a wood deck, all built on the Apache Avenue Street End, which is a public right-of-way leading to the La Gorce Golf Course; and

WHEREAS, the Applicants, to retain the aforestated encroachments, submitted a request for an After-the-Fact Revocable Permit and have completed the application requirements for same pursuant to Article III, Division 2, Sections 82-91 through 82-95 of the City Code; and

WHEREAS, pursuant to Section 82-93 of the City Code, on May 10, 2006, the Mayor and City Commission adopted Resolution No. 2006-26187, setting a duly noticed public hearing to consider the Applicants' request for the After-the-Fact Revocable Permit; and

WHEREAS, at the request of the Applicants, the public hearing was opened and continued, and held at the July 12, 2006 City Commission meeting; and

WHEREAS, the Administration has reviewed the request and prepared its recommendation according to the criteria in Section 82-94 of the City Code; said review/recommendations are more specifically set forth in the Commission Memorandum accompanying this Resolution, and attached and incorporated as Exhibit "A" hereto; and

Agenda Item R7B

Date 7-12-06

WHEREAS, accordingly, the Administration would recommend that the Mayor and City Commission hereby adopt the Administration's findings, as set forth in this Resolution and the attached Commission Memorandum, and deny Applicants' request for the subject After-the-Fact Revocable Permit.

NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that the Mayor and City Commission, following a duly noticed public hearing to hear public comment on same, and having considered the City Administration's recommendation and the criteria for granting revocable permits pursuant to Section 82-94 of the Miami Beach City Code, hereby deny an After-the-Fact Revocable Permit in favor of the Applicants, Mr. Michael R. Buckner and his wife, Margo Buckner, as owners of the property located at 6120 La Gorce Drive, for retaining an iron gate, columns, hedges, paved walkway, paved driveway, a canvas canopy and portion of a wood deck within the adjacent Apache Avenue City right-of-way; further requiring removal of encroachments and restoration of portions of the public street end affected by such encroachments, in such manner as shall be deemed necessary by the City Administration.

CITY CLERK	
	MAYOR
ATTEST:	
PASSED and ADOPTED th	is day of , 2006

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APPROVED AS TO FORM & LANGUAGE & FOR EXECUTION



DIRECT LINE: (305) 377-6231 E-Mail: MLarkin@BRZoningLaw.com

July 10, 2006

VIA HAND DELIVERY

Mr. Fred Beckmann, Director Public Works Department City of Miami Beach 1700 Convention Center Drive, 4th Floor Miami Beach, Florida 33139

Re:

Revocable Permit Application with regard to Property located at 6120 La Gorce Drive, Miami Beach, Florida — Request to Open and Continue Matter

Dear Fred:

Please let this letter serve as the applicant's written request to open and continue the above-referenced matter from the July 12th City Commission public hearing agenda. We respectfully request that the item be placed upon the September 13th City Commission public hearing agenda. Please call me at (305) 377-6231 if you have any questions or comments with regard to the foregoing.

Sincerely,

Michael W. Larkin

MWL/so

cc:

Jorge Gonzalez, City Manager Bob Parcher, City Clerk Jeffrey Bercow, Esq. Margo Buckner

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A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, RATIFYING A CONTRACT TO NATIONAL CONCRETE PRESERVATION, INC., IN THE TOTAL AMOUNT OF \$1,911,095, TO PROVIDE FOR THE REMOVAL OF THE EXTERIOR STUCCO AND REPLACEMENT WITH FIBER REINFORCED STUCCO; THE REMOVAL OF ALL WINDOWS AND REPLACEMENT WITH HURRICANE RESISTANT IMPACT RESISTANT WINDOWS AND FRAMES; AND THE REPAIR OR REPLACEMENT OF ALL DAMAGED EXTERIOR DECORATIVE MOLDINGS, CORNICES, AND BALUSTERS AT **HISTORIC** CITY HALL **BUILDING:** THE APPROPRIATING \$1,900,000 FROM THE CAPITAL RESERVE FUND FOR UNFORESEEN STRUCTURAL REPAIRS AND PROJECT CONTINGENCY; AND FURTHER RATIFYING A CONTRACT CHANGE ORDER. IN THE TOTAL AMOUNT OF \$1,758,504, TO THE AFORESTATED **NATIONAL** CONCRETE PRESERVATION, INC. PROVIDE CONTRACT. TO FOR THE COSTS ADDITIONAL STRUCTURAL REPAIRS.

WHEREAS, a structural survey determined that large portions of the exterior plaster surfaces of the Historic City Hall building had delaminated from the substrate surface, and that decorative concrete moldings had severe spalling due to water intrusion that had deteriorated the structural steel reinforcement that held the moldings in place, and the need to replace the deteriorated windows in the building; and

WHEREAS, to provide a means of hurricane protection to the building, it was also determined that the replacement of the windows would be made with impact resistant windows and frames; and

WHEREAS, the Mayor and City Commission, at its April 20, 2005 Commission meeting, adopted Resolution No. 2005-25857, which authorized the Property Management Director to serve as the Certified General Contractor of Record for all of the Fiscal Year (FY) 04/05 Capital Renewal and Replacement Projects, which included the required renovation/restoration work on the Historic City Hall Building (the Project); and

WHEREAS, the Property Management Director exercised his authority and developed the plans and specifications required to perform the different scopes of work on the Project; and

WHEREAS, following the receipt of a Certificate of Appropriateness by the Historic Preservation Board at its November 9, 2004 meeting, and following the obtaining of all necessary regulatory approvals of the plans, the Property Management Director obtained the master building permit for the entire Project on June 13, 2005; and

Agenda Item R7M

Date 7-12-06

- WHEREAS, a Request for Quotations No VA-QT12-005 was issued, and five (5) contractors that specialized in concrete façade restoration with experience in historic building restoration were contacted to provide quotes for the Project, which resulted in two (2) responsive quotes; and
- WHEREAS, after receiving the quotes, and because of the historic significance of the building, the Property Management Director assembled a review team, which included Planning and Historic Preservation personnel, to review the quotes and to determine if the contractors had the ability, background, and team necessary to successfully complete the Project; and
- WHEREAS, the review team invited the low bid contractor, National Concrete Preservation, Inc., to present its qualifications, understanding of occupied building requirements, product review requirements, and the methodology they would use in performing the work of the Project; and
- WHEREAS, the review team concurred that National Concrete Preservation, Inc., had the experience, qualifications, and ability to perform the work on the restoration of the Historic City Hall Building; and
- WHEREAS, accordingly, the Property Management Director issued a contract to National Concrete Preservation, Inc., in the total amount of \$1,911,095, to provide for the removal of the exterior stucco and replacement with fiber reinforced stucco; the removal of all windows and replacement with hurricane resistant impact resistant windows and frames; and the repair or replacement of all damaged exterior decorative moldings, cornices, and balusters at the Historic City Hall Building; and
- WHEREAS, after the start of the demolition portion of the Project, major structural defects were found in the structural concrete columns and beams that support the structure of the building, and in the non-loading bearing envelope materials used in the exterior wall substrate; and
- WHEREAS, the Property Management Director ordered a structural inspection/evaluation of the structural elements of the building, and the development of plans and specifications from BEA International, Inc., to address the structural deficiencies in the building; and
- **WHEREAS**, after the structural repair plans and specifications were complete, a construction cost estimate of \$2,500,000 was provided by BEA International, Inc., for the additional structural repair work required for the Project; and
- WHEREAS, the structural repair plans and specifications were submitted to the Building Department, and received an approval for an addendum to the master building permit on June 9, 2006 for the required additional structural repair work; and
- WHEREAS, following receipt of the addendum to the master building permit, the Property Management Director negotiated the additional structural construction costs with National Concrete Preservation, Inc., and arrived at a final cost of \$1,758,504; and

WHEREAS, as required by Resolution No.2005-25857, the Administration hereby requests that the Mayor and City Commission ratify the Property Management Director's original contract with National Concrete Preservation, Inc., in the total amount of \$1,911,095, to provide for the removal of the exterior stucco and replacement with fiber reinforced stucco, the removal of all windows and replacement with hurricane resistant impact resistant windows and frames, and the repair or replacement of all damaged exterior decorative moldings, cornices, and balusters at the Historic City Hall building, and further ratify a contract change order, in the total amount of \$1,758,504, to National Concrete Preservation, Inc., to provide for the additional structural repair needs deemed necessary to successfully complete the Project; and

WHEREAS, the Property Management Director also requests a Project contingency of \$141,495, for collateral Project needs, for a total additional structural repair Project cost of \$1,900,000; and

WHEREAS, accordingly, it is hereby requested that the Mayor and City Commission appropriate \$1,900,000 from the Capital Reserve Fund, to provide for the additional structural repairs and Project contingencies.

NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that the Mayor and City Commission hereby ratify a contract with National Concrete Preservation, Inc., in the total amount of \$1,911,095, to provide for the removal of the exterior stucco and replacement with fiber reinforced stucco; the removal of all windows and replacement with hurricane resistant impact resistant windows and frames; and the repair or replacement of all damaged exterior decorative moldings, cornices, and balusters at the Historic City Hall building; and further appropriate \$1,900,000 from the Capital Reserve Fund; and further ratify a change order to the National Concrete Preservation, Inc. contract, in the total amount of \$1,758,504, for the additional structural repair requirements at the Historic City Hall Building.

PASSED and ADOPTED THIS	day of	2006.
ATTEST:		
CITY CLERK		MAYOD
CITT CLERK		MAYOR

MAYOR

APPROVED AS TO FORM & LANGUAGE & FOR EXECUTION

y Attorney Date

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